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A Cultural Study of Administrative Litigation in the People's Republic of China

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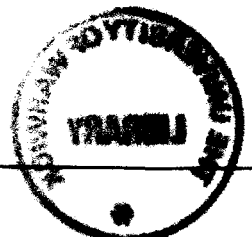


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To you,

O Lord....

Show me your ways, O Lord,
teach me your paths;
guide me in your truth and teach me,
for you are God my Savior,
and my hope is in you all day long.

~ Psalm 25 ~

Abstract

The introduction of administrative litigation in the People's Republic of China in October 1990 initiated a new era in the Chinese ruled-rulers relationship. It broke through the entrenched ruled-rulers dichotomy and established a formal legal channel for ordinary citizens to defend their personal and property rights against any infringement by government officials' unlawful specific administrative acts. This thesis is the first empirical analysis of administrative litigation in the People's Republic of China to use a cultural approach.

A microanalysis was conducted through interviews with 738 individual household proprietors and 152 government officials from the Hai Dian, Xi Cheng, and Xuan Wu districts of the Beijing municipality between mid-1996 and early 1997, with a four-page questionnaire to assess their administrative litigation cultures. Complemented by a macroanalysis, the survey also examined the structure and problems of the PRC's administrative litigation through comprehensive literature reviews, in-depth personal interviews, and attendance in court hearings.

The PRC's administrative litigation is a top-down contrivance of the rulers to uphold their rule. As such, it has never been a fully-fledged redress mechanism, but only a confined concession with restricted jurisdiction bound by a narrowly but cautiously construed Administrative Litigation Law. Implementation of the PRC's administrative litigation has been difficult and problematic. The resulting consequences are confined and biased towards the rulers. The overall usefulness of the mechanism is restricted. And its prospect is worrying.

The empirical survey generates extraordinarily interesting findings. The affective orientation of both sample groups on the need for administrative litigation was found highly positive and supportive. Their evaluational orientation on the consequences of administrative litigation in the country was highly affirmative. And their expectational orientation towards the future of the PRC's administrative litigation was equally optimistic. The surveyed rulers were clearly better informed in their cognitive orientation, but more reserved in their jurisdictional orientation. Meanwhile, the majority of the surveyed ruled were clearly dismayed in their appraisal orientation regarding the usefulness of the PRC's administrative litigation. The latter is obviously below the acceptable threshold, and substantial improvement is needed if it is to help ameliorate the Chinese ruled-rulers relationship.

Chapter 1 Introduction: Rationale, Framework, Objectives, and Methodology of the Study

The introduction of administrative litigation in the People's Republic of China (PRC) on October 1, 1990 has tremendous significance. It represents a move from the long-lasting rule of man to a nascent rule of law in the mainland. It signifies an important step forward in the Chinese modernisation drive from sheer economic reform to serious legal development. It constitutes a major improvement in the country's procedural law system, which now comprises all three important branches of civil, criminal and administrative proceedings. But above all, it initiated a new era in the Chinese ruled-rulers relationship. For thousands of years in the past, as well as in the earlier years of the PRC, the Chinese rulers were used to being over and above the ruled and the law. With the present administrative litigation, the rulers are, in legal terms, brought on equal status with the ruled and under the rule of the law. For an administrative state like the PRC, where the rulers predominate, the symbolic meaning of administrative litigation, not to mention its solid contributions, can hardly be exaggerated. Such an important issue deserves serious study. This thesis presents the first empirical analysis of the PRC's administrative litigation and the first cultural study of administrative litigation in the PRC.

In this first chapter, an introduction to the research will be given, including its rationale, significance, theoretical framework, research hypotheses and questions, methodology and procedures, as well as limitations. It is hoped that together they will provide a sufficient background for understanding the discussions on the issue in the chapters that follow.

A. Rationale of the Study

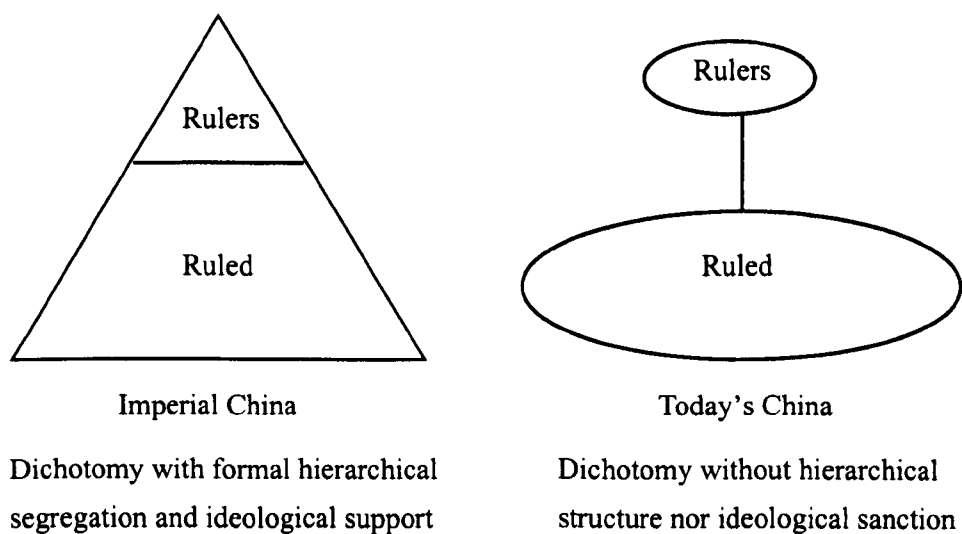
1. Prolonged Ruled-Rulers Dichotomy and Infringement upon the Ruled

My Chinese origin and political science training brought my attention to the dilemma of the relationship between the Chinese ruled and rulers. My concern is the daily life of 1.2 billion fellow countrymen. In the PRC, they are labelled masters of the country and the nation is proclaimed as belonging to them as a whole. But the ideal is not necessarily the reality. The actuality in the PRC is that individual interests are overshadowed by collective needs under socialist canons, citizens' rights are subject to party and state resolutions for revolution or modernisation, and democracy in principle gives way to centralism in practice. In a nutshell, the ruled are labelled as the rulers but they are not. The ancient ruled and rulers dichotomy

still exists today.

A clear and rigid dichotomy between the ruled and rulers was an accepted fact of life in imperial China until the fall of the Son of Heaven. After the collapse of divine rule, the Chinese turned back on their secular world and began to try to eliminate the gap between the ruled and rulers, first by liberal democracy in the first half of the twentieth century and then by socialist democracy in the second half. Yet both attempts faced the same problem of linking the ideal to reality. At the end of the day, the ruled are still very much under the rule of the rulers and not vice versa (see Figure 1.1 below). Government of the people, by the people, and for the people is a distant promise yet to be realised in the mainland.

Figure 1.1 The Ruled and Rulers in Imperial and Today's China



Worse still, the dichotomy of the ruled and rulers can easily invite infringement and oppression of the former in various forms by the latter. The ruled in imperial China were regarded as belongings at the disposal of the rulers, who alone held the power of life and death. The ruled were simply at the mercy of the rulers, who might or might not display the virtue of *ren* (benevolence, 仁) deemed so important in Confucianism. Although nowadays China would not accept this feudal worldview, rulers' infringement and oppression of the ruled remains the order of the day, and is no less ferocious and endemic. Major or minor incidents of infringement have continued to appear in the PRC since 1949. Dichotomy and infringement is still one of the major problems between the ruled and rulers in China, and the search for a resolution is an urgent and important challenge calling for research in this area.

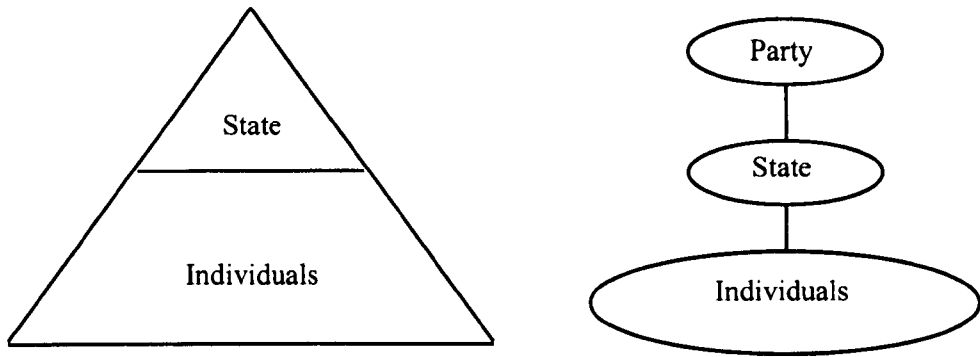
2. Past and Present Ruled-Rulers Relationship

Past and present ruled-rulers relationships have indeed changed a lot. In the two millenniums of imperial China, the ruled-rulers relationship was entirely an issue between the state and individuals, with the former represented by the emperor, his imperial family, the royal state officials and numerous local gentries vis-a-vis millions of loosely organised, broadly self-sufficient farmers and common folks. At

that time, the idea of a political party, in its modern sense, had not really emerged nor played any role in the political arena. However, since the state in its imperial form collapsed in 1911, its role suddenly almost vanished or at least was very much weakened, and was gradually taken over by the then emerging political parties.

When the victorious Communist Party took over in 1949, the state came under the command of the party and never really came back in force. The ruled and rulers relationship then became a question largely between the vanguard party, headed by the supreme party secretary, and comrade individuals, with or without party membership. A sanctified royal clan was succeeded by an omnipotent party, loose submission was replaced by mass mobilisation, self-sufficiency was superseded by state provision, and politically indifferent farmers became politically driven proletariats, just to mention a few changes. The state in the new PRC became an administrative arm of the party only. A formerly direct bilateral relationship then became an indirect tripartite one (see Figure 1.2 below).

Figure 1.2 From Direct Bilateral to Indirect Tripartite Ruled-Rulers Relationship



Due to the omnipresence of the party during its early years of rule, China studies – whether local or overseas – on Mao’s period were almost entirely a study of the party because nearly all historical, political, economic, social, or even philosophical issues seemed inevitably hinged on the party. The state, once supreme in the prior two millennia, had lost its central position in the study of the ruled-rulers relationship in communist PRC.

However, it did not take long for the uneasy blending of party and state to develop problems. Fusion of the party and state removed the latter’s autonomy and efficiency. Fusion of the party and individuals eroded the latter’s initiative and enthusiasm. Fusion of the three resulted in over-politicisation of the entire state and populace. Individual mistakes of the then party leader, Mao, during his chairmanship and particularly his last ten years of life, were unrestrictedly stretched into

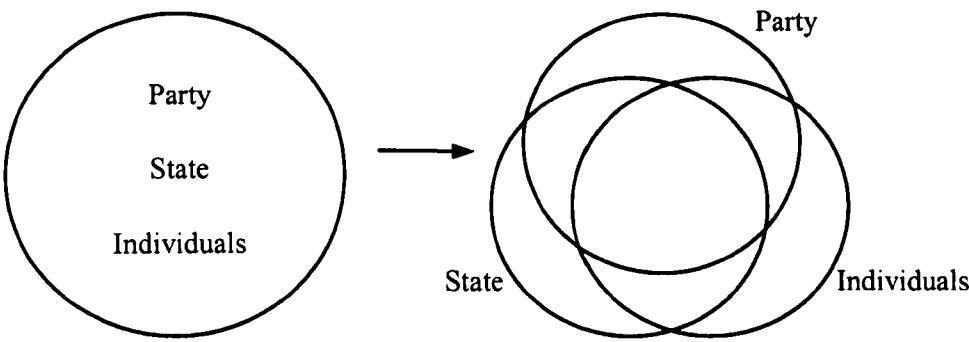
destruction of the whole state administration and loss of an entire generation. However unwilling or unprepared they might have been, the succeeding Dengist leadership was forced to resolve the problems left by Deng's predecessor by a series of economic, political and legal reforms, which in turn worked together to promote the decomposition of the former fusion of party, state and individuals.

Economic reform since the 1980s enriched a significant proportion of the ruled, such as the newly-risen individual household proprietors, who then demanded greater autonomy and personal protection against administrative impropriety. Later political reform empowered the state with greater discretion, responsibility and functional autonomy over state administration. Recent legal reform brought the party, state, individuals and their relationship more under legal principles and settings. The ruled-rulers relationship in the PRC has changed significantly in the 1990s. The party's unilateral and unchallenged rule has been deflated. A more distinct state and individuals relationship under an emerging legal framework is re-appearing in contemporary China.

This research is based on a belief that fusion of the party, state and individuals under the unquestionable leadership of the party in the pre-reform PRC is currently

in transition, moving towards a more defined tripartite relationship among the three with more obvious autonomy for each of them (see Figure 1.3 below). And this transition has created the space and the need for China studies to move away from looking at the party alone for answers to all questions as it did in the past.

Figure 1.3 Transition from Fusion to a More Defined Tripartite Relationship in the PRC



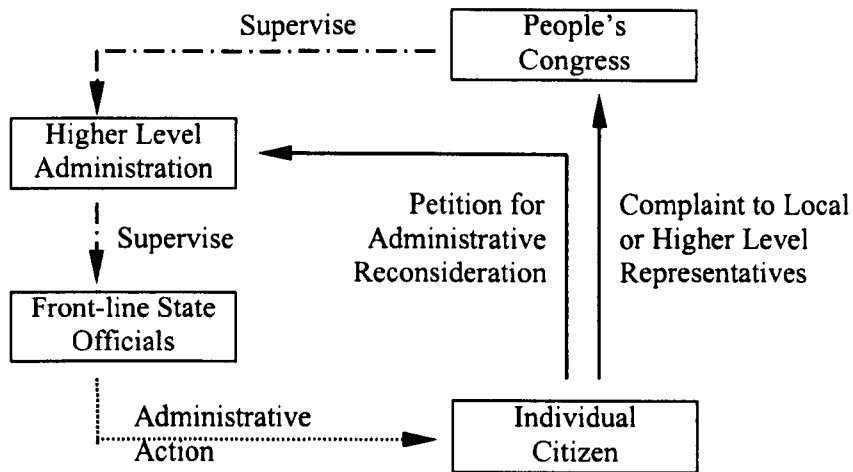
3. Latest Breakthrough – Emergence of the Chinese Administrative Litigation

Ruled-rulers relationship in the PRC had indeed gone through extreme ups-and-downs in Mao’s era. From the 1950 anti-revolutionaries campaign to the 1966-76 Cultural Revolution, continuous political movements increasingly discredited the rulers, outraged the ruled, heightened tensions between the two groups, and ruptured their good relationship established during the war years. Original mechanisms allowing the ruled to complain against the rulers’ infringement and resolve their

conflict with the rulers were found to be insufficient. Administrative litigation emerged at the end when the rulers, after a long period of misrule, finally admitted mistakes in their governance, inadequacy of the existing administrative redress mechanisms, and necessity for a new approach to administer the country. The PRC's administrative litigation did not emerge by itself nor was it established by members of the ruled for their own protection. It was an experiment of the rulers to restore their disintegrating relationship with the ruled, an attempt to rescue their collapsing legitimacy to rule the country, and a contrivance to prolong their stay in power.

Formerly in the PRC during Mao's era, the ruled were given two ways to complain against state infringement of their rights and interests, i.e. either by complaining to their representatives in the People's Congress or by petitioning to a higher level of the concerned state organ for an administrative reconsideration (see Figure 1.4 below). These two mechanisms are still in use today. But since the congressmen are not true representatives of the ruled and the higher level administrations are members of the rulers group, the usefulness and helpfulness of the two redress channels are very much in doubt.

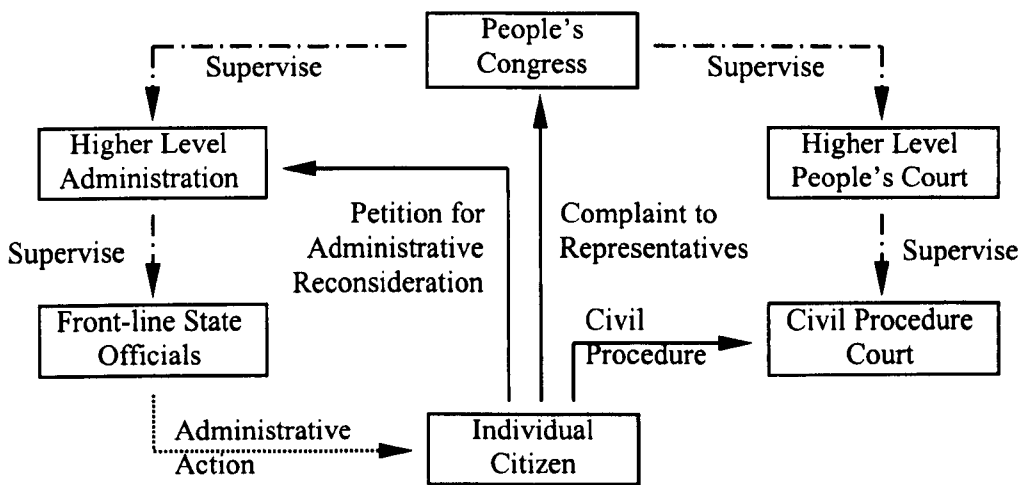
Figure 1.4 Bipartite Redress System in Mao's Era



In addition, the disastrous Cultural Revolution was so fatal that it shattered the ruled-rulers relationship in the mainland and rendered all redress mechanisms irrelevant. The rulers (and the ruled) learned with tears and blood the horror with rule by man, the misery of a country without laws. Together with the hope for attracting foreign investors under the new modernisation agenda, the post-Mao rulers decided to resurrect a legal system and to rule with laws. This shift led to the promulgation of a whole series of substantive and procedural laws in the country and paved the way for the emergence of administrative litigation in the mainland. In fact, a quasi-administrative litigation appeared under the PRC's Civil Procedure Law in 1982 when the latter allowed the ruled to complain against state infringement of their rights and interests through the civil procedure courts. The former bipartite redress system was then transformed into a tripartite review

structure (see Figure 1.5 below).

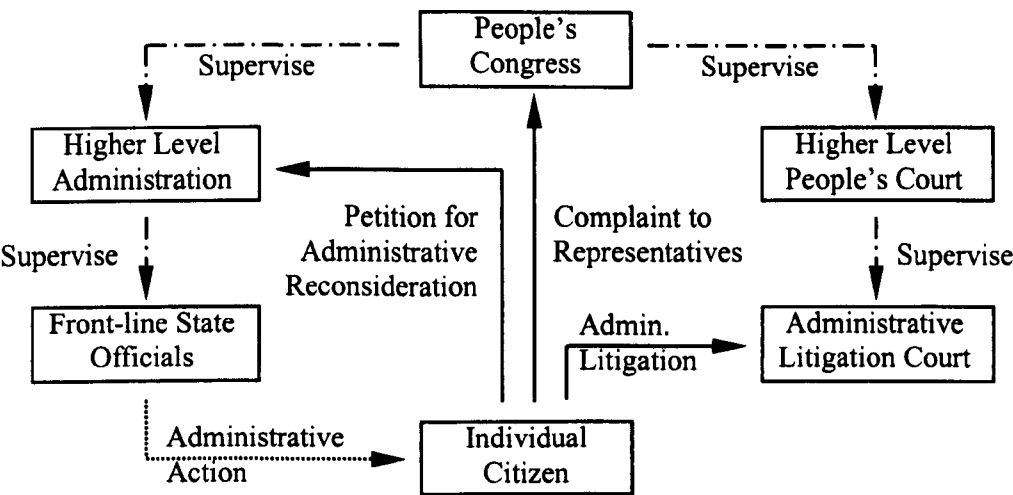
Figure 1.5 Tripartite Review System after 1982 in the PRC



But the civil procedure system was not designed for administrative litigation and could not prove itself to be a proper and effective channel for administrative redress. One obvious case in point concerned the burden of proof. Requiring the ruled as accuser to prove in court the impropriety of the ruler as accused, according to civil procedure principle, was a Herculean task because the ruled simply had little access to the required information and documents. In view of the insufficiency of civil procedure to deal with the worsening problem of administrative impropriety since the commencement of the reform era, the government started to consider establishing an administrative litigation system in 1986. The Thirteenth National People's Congress of 1987 helped speed up the process when it announced an

ambitious political and legal reform agenda. With a favourable political climate and after three years of serious drafting work, the PRC’s Administrative Litigation Law (hereafter referred to as the Law) was finally promulgated and became effective from October 1990 (see Appendix 1). It opened up a new era in the PRC’s ruled-rulers relationship. Henceforth, the ruled are given a formal and tailor-made legal channel to check against administrative infringement through an institution of judicial review, commonly known as the institution of citizens suing the government (*min gao guan*, 民告官, see Figure 1.6 below and chapter two for more details about the setting up of administrative litigation in the PRC).

Figure 1.6 Formal Establishment of Administrative Litigation in the PRC in 1990



This latest development of administrative litigation in the PRC provides a new horizon for study of the ruled-rulers relationship in the mainland. This study

recognises the return of the state, the rise of the individuals, and the establishment of a legal framework regulating the relationship between the two. It seeks to examine this new *min gao guan* institution.

4. First and Foremost – The Culture of Administrative Litigation

The Chinese world is pulled together by a rich cultural heritage. Unique culture accumulated throughout China's history underpins the whole society. It nurtures the attitudes of individual Chinese, shapes behaviour of the masses, promotes socio-political structures of the state, and influences even economic activities in the country. It is true that Chinese culture is a complex agglomeration which is not easy to define, does change over time, and may be affected by various factors. However, in China, culture is still one of the major independent variables that affects and explains the psychological environment, behavioural expressions and institutional settings of the Chinese. It confirms as well as suppresses mental orientations, emotional articulations and value judgements; supports as well as bypasses physical institutions, established structure and codified statutes; fosters as well as dispels economic systems, activities and relations. Among others, the cultural factor is pervasive and important in the analytical discourse of Chinese problems.

This does not mean that other factors like geographical terrain and conditions, institutional constraints and dynamics, and external impacts and stimulation are not meaningful in the study of Chinese problems, nor that China issues can be solely and fully contemplated by cultural explanations. But the geographical factor is not the major consideration for the ruled and rulers in the pursuit and development of administrative litigation. Institutional consideration is distant and weak for the Chinese administrative litigation institution when the ruled and rulers do not have particularly strong devotion to its establishment nor strong compulsion to its perfection. Lastly, the external factor simply has little relevance in such a sovereign issue of the internal ruled-rulers relationship. It is argued that the study of the PRC's administrative litigation can be more meaningfully commenced through a cultural perspective on the mind-state of the ruled and rulers towards the administrative litigation institution and actions.

It is out of the above-mentioned rationale that the present research is designated to be **a cultural study of administrative litigation in the PRC**. Although it may not cover every question from all aspects, it is still believed that this exploratory and pioneering study is meaningful and significant by itself.

B. Significance of the Study

Studies of the Chinese ruled-rulers relationship, typically those undertaken by indigenous Chinese scholars based on local perspectives, emerged and evolved almost alongside the age-old relationship itself. Confucianism is a respected example of these studies and one of the major forerunners dating back to 200B.C.. Other studies include Chinese Legalism, Daoism, and Neo-Confucianism, just to mention a few. Though these studies may as well touch on anthropology, epistemology, or philosophy, an indispensable core of their contents is concerned with the problem of governance. They provide a significant contribution to our understanding of the Chinese ruled-rulers relationship in the past. But since the latter has always been changing, particularly in the modern age, renewed study is needed to keep track of its development in recent time periods under new socio-political circumstances.

When China was opened up in the mid-eighteenth century by Western powers, China issues began to be studied by Western scholars, using Western methodologies and perspectives. These overseas scholars have very much enriched our understanding of modern China by providing a rich collection of comparative

literature from different angles. They may have different interests or standpoints, some in political science, some in economics, sociology, or history; some are liberal, some are pro-Communist, some are independent, yet they all help further our knowledge about Chinese society and its leadership. Unfortunately, few of them have touched on the latest issue of administrative litigation in the PRC, leaving the issue largely undocumented. In this respect, there is almost a blank in the Western literature, not to say Western understanding.

Administrative litigation in the PRC is a new development with important implications for the PRC's ruled-rulers relationship. It has caught the attention of many mainland scholars who have already started writing on the issue. However, local studies of the issue so far are still wanting in many aspects. Mainland scholars' studies are mostly restricted to the basics of related legislation, explaining and elaborating concerned legal documents and state policy, without much critical judgement or independent investigation on controversial issues. Many questions about the PRC's administrative litigation are still awaiting research, and people's understanding of the issue is yet to be enriched.

In response to our present thin knowledge, unfurnished understanding and

shorthanded documentation on the PRC's administrative litigation, this study attempts to enhance our understanding, reduce the gap in the existing literature and provoke further study on the stated issue.

C. Literature Review and Theoretical Framework

1. Difficulties with Approaches and Models on Public Administration

Literature and studies on public administration in the West during the last century are rich and numerous. At the risk of oversimplification, they can be broadly classified into three different approaches and five major models (if the recent new public management movement in the United States is not yet mature enough to be categorised).¹ The former refer to the management approach, the political approach, and the legal approach. The latter include the classic bureaucratic model, the neo-bureaucratic model, the institutional model, the human relations model, and the public choice model. These are invaluable in providing useful frameworks for studying the bureaucracy.

Unfortunately, none of the above arise from or cater for the Chinese or socialist

context. Consequently, difficulties are inevitable when applying these approaches and models to the PRC's administrative litigation. For instance, economy, efficiency and effectiveness acclaimed in the managerial approach from Taylor to Wilson are not serious concerns of the Chinese bureaucrats.² Likewise, representativeness, political responsiveness and accountability honoured by Appleby, Truman, and others in the political approach are more ritual than reality in the mainland.³ This leaves us with the legal approach as suggested by Bazelon, Chayes, and Dimock, etc.⁴ But given the expatriation of separation of powers and the long period of subservience of laws to political and administrative disposition in the PRC, judicial control of bureaucratic behaviour is only in a nascent and primordial stage of development in contemporary China.

The classic bureaucratic model unfolded by Weber and Gulick, and the neo-bureaucratic models put forward by Simon, March, and others, explain very well an independent civil service found in many European and American nations, but they cannot be comfortably applied to the instrumental and subordinate ruling machinery of a Leninist party state like the PRC.⁵ The public choice model emphasized by Tullock, Niskanen, and others, is equally at odds under a socialist nomenklatura system, where the public has, in fact, little choice.⁶ The remaining institutional

model, popularised by Thompson, Etzioni, and human relations model, promoted by McGregor, Likert, may be helpful for understanding the functioning of internal administrative reconsideration and *guanxi* (personal connections, 關係) in the mainland as alternative redress channels for the ruled, but they would not help much in explaining administrative litigation in the PRC.⁷

2. Problems with Models and Methods in Communist China Studies

Models and methods in Communist China studies are time and issue-bound.⁸ Study of the early PRC by Barnett and Friedrich drew upon the totalitarian model, which was originally developed as a critique on Stalinist Russia.⁹ Influence of this model faded away starting from the 1960s when China broke away from alliance with the Soviet Union, then through the 1970s when China was fragmented by the Cultural Revolution, and even more in the 1980s after China adopted the policy of reform and opening to the West. The passage of time and change of events did not only lead to the fall of the overbearing totalitarian model in China studies, but also gave rise to a variety of models which then became more specific in scope and focus, e.g. the faction model, class-struggle model, groups model, bureaucracies model, and neo-authoritarian model. Together, these models significantly enrich our

understanding of modern China, but they all have restricted applications.

The faction model about the rulers explicated by Nathan, Whitson, Parrish, and faction model about the ruled expounded by Ling, Walder, and Oi, accentuates the formation and cultivation of factions in explaining the post-totalitarian power distribution and struggle during the fragmented years of the PRC.¹⁰ The class-struggle model elaborated by Bettelheim and Robinson, originates from Marxism and applies exclusively to a class-labeled line struggle during major events of socialist transformation directed by Mao, particularly the Cultural Revolution.¹¹ The groups model used by Skilling, Tsou, Goodman, etc., goes beyond the faction model by pointing to the rise of interest groups in contemporary Chinese society as an account of the socio-political diversities in post-monolithic PRC.¹² The bureaucracies model employed by Lampton and Lieberthal, centres around the state machinery across vertical and horizontal lines to see how policy is formulated and implemented in reformist China.¹³ The neo-authoritarian model enunciated by Petracca, Gong and Sautman, attempts to reconcile the uneasy coexistence of enlarged economic autonomy during the reform era with the totalitarian legacy of authoritarian political control.¹⁴ All these models are helpful to our understanding of specific issues and developments during particular time periods of contemporary

China, but their being extraneous and antecedent to the introduction of administrative litigation in the PRC largely restricts their usefulness in explaining particulars of the latter.

After all, this study is not a holistic diagnosis of the Chinese public administration or the political system of Communist PRC, but a focused analysis of the country's recently introduced administrative litigation as a major development in the Chinese ruled-rulers relationship. Though related, the issue of administrative litigation goes beyond the strict boundaries of all the above approaches and models which can, therefore, only provide ancillary but not direct reference for the study. A more methodological approach would better suit the present study.

3. A Cultural Approach to the Study

Alongside the rapid growth in human knowledge, an impressive accumulation of intellectual discoveries, diversification in academic disciplines, and advances in modern information technology, there is a parallel expansion in research methodology of various kinds. Scholars in the social science discipline alone have developed many analytical approaches over the years in their studies, the major ones

being the institutional approach, behavioural approach, cultural approach, system approach, and elite approach.¹⁵ These approaches have facilitated later followers with solid methodological know-how in tackling their own problems. Yet, however powerful these approaches may be, no one of them can be substituted for the others, nor claim to be fault-proof or “all-in-one”. Each one of them has its own strength and limitations, hence, the question is basically which approach for what problem.

The elite approach supported by Mills, Scalapino and Moore, is clearly not suitable for this study of the PRC’s administrative litigation because it would exclude the most important group of actors in the institution, namely the common citizens.¹⁶ Distinguishing between input and output of the system and examining the relationship between the two as would be required by the system approach maintained by Easton, can help illustrate how the administrative litigation institution is made up, but it cannot go further to demonstrate the ruled-rulers relationship found together in the input side of the institution.¹⁷ On the other hand, to examine empirically what and why the ruled and rulers do in the process of administrative litigation in accordance with the behavioural approach as performed by Allison, King, Sanders and Dunleavy, would require case studies on behaviour of the participants in the litigation, which is technically hardly possible, if not impossible

under the present situation in the PRC.¹⁸

The institutional approach sustained by Finer, Johnson, March and Rhodes, has been a dominant tradition of political analysis in both Britain and the United States but it is not without problems.¹⁹ Though powerful in explaining the causes and consequences of institutions by describing their formal set-up and evolution over time, the institutional approach fails to consider the informal aspects of the institutions, i.e. human beliefs and attitudes. The development of new institutionalism by Smith, March and Olsen, with more emphasis on the norms of the actors in the institutions, acknowledges the weakness in the institutional approach and confirms the importance of the cultural approach in intellectual discourse.²⁰ In fact, the importance of attitudinal and emotional dimensions in political analysis has long been recognised by political scientists like Montesquieu²¹, Rousseau²², and de Tocqueville²³. It has also been vividly pointed out by sociologists like Max Weber²⁴ and sinologists like Lucien Pye²⁵.

It should not be taken to imply that formal aspects of the institution are not important for understanding administrative litigation of the PRC. However, such a descriptive, formal and historical method of analysis may not be very helpful in

analysing the PRC's administrative litigation at the present stage, due to the latter's short history and immature development. On the contrary, the cultural approach, though difficult to define and measure, has the advantages of going beyond formal structures of the institution to identifying the beliefs that affect the ways in which people act under the institution and defining the situation in which administrative litigation actions take place. It is particularly suitable as the starting point to investigate the new institution of administrative litigation in the PRC, where the cultural factor is believed to be pervasive and important for analytical discourse.

4. Theoretical Framework of the Study

The theoretical framework of this study is built upon ideas from the post-war empirical studies on political culture with some amelioration and supplement.²⁶ Using the words of Almond, it is the belief of this research that administrative litigation is embedded in a particular pattern of psychological orientations.²⁷ Such orientations represent a constellation of attitudes and sentiments which may be called the **administrative litigation culture**. This administrative litigation culture consists of the system of empirical beliefs, expressive symbols, and normative values which defines the situation in which the institution and actions of

administrative litigation exists and take place (see Figure 1.7 below).

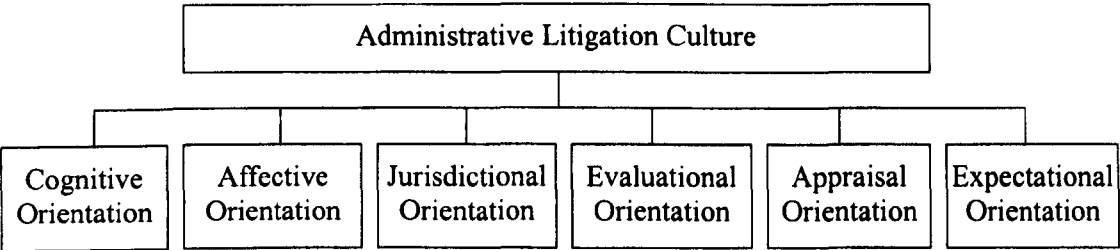
Figure 1.7 Administrative Litigation Embedded in its Surrounding Culture



In particular, Almond and Verba’s definition of political culture in terms of three psychological orientations, i.e. cognitive, affective, and evaluational, provides a good theoretical basis for defining administrative litigation culture in this study.²⁸ However, their use of evaluational orientation is too general for focused study and the three orientations as a whole are not inclusive enough for a full-blown study of administrative litigation culture. Hence, evaluational orientation is specified in this study to refer to comments on the immediate consequence of administrative litigation only whilst comments on the empirical usefulness of administrative litigation is called appraisal orientation. Besides, two new orientations are added –

jurisdictional orientation for ideas about the scope of review under administrative litigation and expectational orientation for belief about the future development of administrative litigation – to make the study more complete and thorough. Through examination of the six orientations, a holistic analysis of the administrative litigation culture can be obtained. In sum, administrative litigation culture is defined in this paper as **the pattern of cognitive, affective, jurisdictional, evaluational, appraisal, and expectational orientations with respect to administrative litigation** (see Figure 1.8 below).

Figure 1.8 Definition of Administrative Litigation Culture



The six orientations are used here as short-hand expressions representing six different dimensions of the administrative litigation culture. **Cognitive orientation** refers to the extent of knowledge and awareness among the ruled and rulers about the administrative litigation law and institution, and how much they have learned about the PRC’s administrative litigation, whether from others, by self-study, or

through personal experience. **Affective orientation** measures the two parties' feelings towards the institution, their degree of support and enthusiasm for the institution, and whether they would subscribe to it as a redress mechanism and not regard it as alien and irrelevant to their lives in particular and to the country at large. **Jurisdictional orientation** stands for the two parties' ideas about the proper scope for administrative litigation in the way they see it, their conception about officialdom and administrative improprieties under the current situation in the PRC, i.e. what administrative actions or inactions, whether specific or abstract, they would regard as demanding litigation in its full sense.

The term **evaluational orientation** speaks for itself as being the subjective judgement on the administrative litigation institution's likely impact on the government and society, how much positive effect it can likely bring forth, whether the institution has the potential to attain its immediate purpose of protecting citizens' legal rights and correcting officials' illegal actions, as well as other less direct consequences. **Appraisal orientation** covers a wide spectrum of attitudinal comments among the affected parties on the usefulness of the institution, how empirically useful they regard the institution, how they compare the institution with other redress mechanisms, and how they judge the role of the courts as arbitrator in

administrative litigation. The final **expectational orientation** contains no more than its literal connotation, i.e. faith and hopes of the concerned parties about the future of administrative litigation, how far they believe the institution should be further developed, on what grounds and under what conditions.

Although the notion of administrative litigation culture is broken down into six orientations for measurement and discussion purposes, it does not mean that they are totally separated and independent from one another. On the contrary, they are inter-related, with one affecting or affected by the others. Cognitive orientation is the first and foremost member of the six before the others can exist, but it may require just a basic knowledge and no more upon which to establish the other orientations. Affective orientation comes next. Limited enthusiasm and support for the institution might in itself already affect a person's attitude in the other four orientations. How much a person expects the institution to do in his jurisdictional orientation would also affect how much he expects the institution would achieve in his evaluational assessment, and how much hope he maintains for the institution in his expectational orientation. Likewise, how useful a person regards the institution in his appraisal orientation is also tied with how influential he regards it in his evaluational orientation and how optimistic he is with the institution's future. The relationship

among the six orientations is an inherent characteristic of the administrative litigation culture salient for any discussion of the latter.

Administrative litigation culture is very broadly defined above. The term refers to all orientations related to administrative litigation, whether of a cognitive, affective, jurisdictional, evaluational, appraisal, or expectational sort. It refers to the orientations of both parties at the two ends of an administrative litigation relationship, i.e. the ruled as the plaintiff and the rulers as the defendant; and it refers to orientations to all aspects of the administrative litigation institution, whether directly related to the litigation process or consequential to the institution. This broad definition is useful to direct attention to a general concern for the topic, to support a multi-dimensional analysis of the issue, and to promote an overall comprehension of the subject. Thus, the focus is not restricted to specific attitudes such as comments on bureaucratic behaviours, attitudes on the administrative-judiciary relationship, and beliefs on individual rights, etc. This is not to argue that specific administrative litigation attitudes and beliefs are not important. On the contrary, it is these specific attitudes and beliefs that make up the whole of the administrative litigation culture.

To say that administrative litigation culture is important is not very informative; to say what aspects of administrative litigation culture are determinants of what phenomena – what the significant administrative litigation beliefs are, and how they are related to other aspects of administrative litigation institution – may be very important. Using the words of Kavanagh, the administrative litigation culture is an analytical abstraction, i.e. information can be abstracted from the larger environment about the knowledge, feelings, evaluations and appraisals of people to administrative litigation.²⁹ Each of the six orientations is, in fact, related to a larger question about different aspects of the administrative litigation institution. Cognitive orientation relates to the developmental stage of administrative litigation, i.e. the drafting and promulgation of the PRC's Administrative Litigation Law and setting up of the institution. Affective orientation is tied to the implementation of administrative litigation in the PRC. Jurisdictional orientation touches on the scope of review and protection under administrative litigation. Evaluational orientation concerns the consequences of the institution. Appraisal orientation is connected with the usefulness and limitations of administrative litigation. Finally, expectational orientation suggests the likely future for administrative litigation in the country.

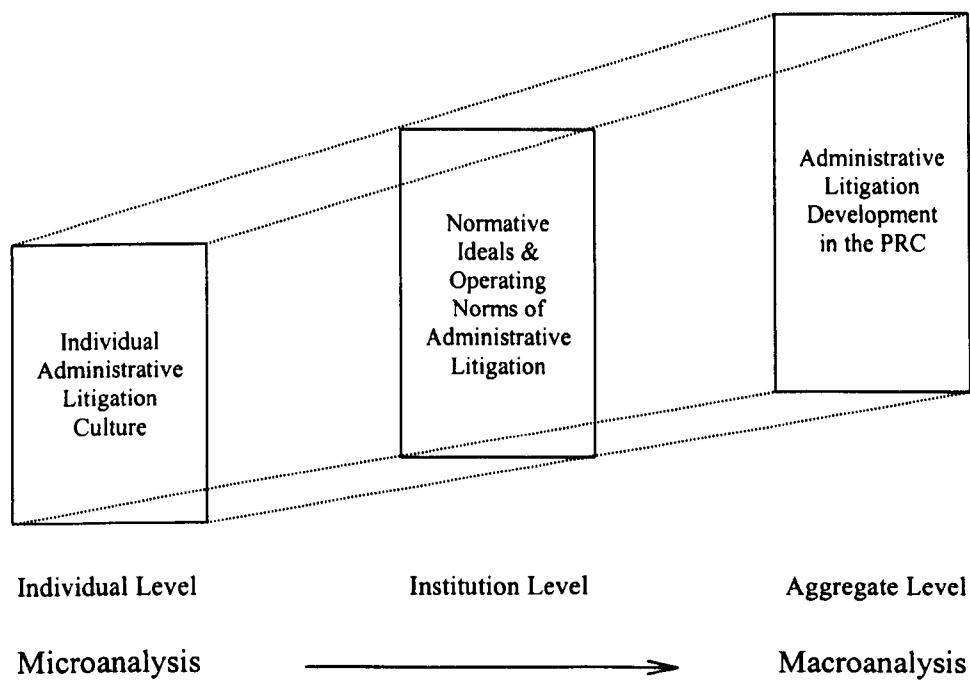
Borrowing from Pye and Verba, administrative litigation culture provides the

individuals with controlling guidelines for administrative litigation behaviour and gives the collectivity a systematic structure of values and rational considerations which ensures coherence in the performance of the administrative litigation institution.³⁰ The administrative litigation culture encompasses both the normative ideals and the operating norms of administrative litigation. It is the product of both the collective history of an administrative litigation institution and the life histories of the individuals in that institution; and thus it is rooted equally in public events and private experiences. In sum, the administrative litigation culture provides structure and meaning to the administrative litigation sphere in the same manner as culture in general gives coherence and integration to social life. In applying the analysis of administrative litigation culture to the question of implementation and development of administrative litigation, it is possible to throw light on the various combinations and constellations of values which may govern different patterns of implementation and different levels of development of the institution, and which may be the prime causes of frustration and disappointment over the prospect of improving the relationship between the ruled and rulers by means of administrative litigation.

Analysis of the administrative litigation culture not only enables us to understand the larger cultural background within which the institution of

administrative litigation exists, but also allows us to look back into that institution and its problems through appreciation of the larger cultural background. In studying administrative litigation development in the PRC in terms of the administrative litigation culture of individuals in the country, it is thus possible to bring together in a common focus the approaches of macroanalysis and microanalysis. In sum, a microanalysis of the six orientations of the administrative litigation culture of the ruled and rulers in the PRC is also a macroanalysis of the PRC's administrative litigation law and institution in general (see Figure 1.9 below).

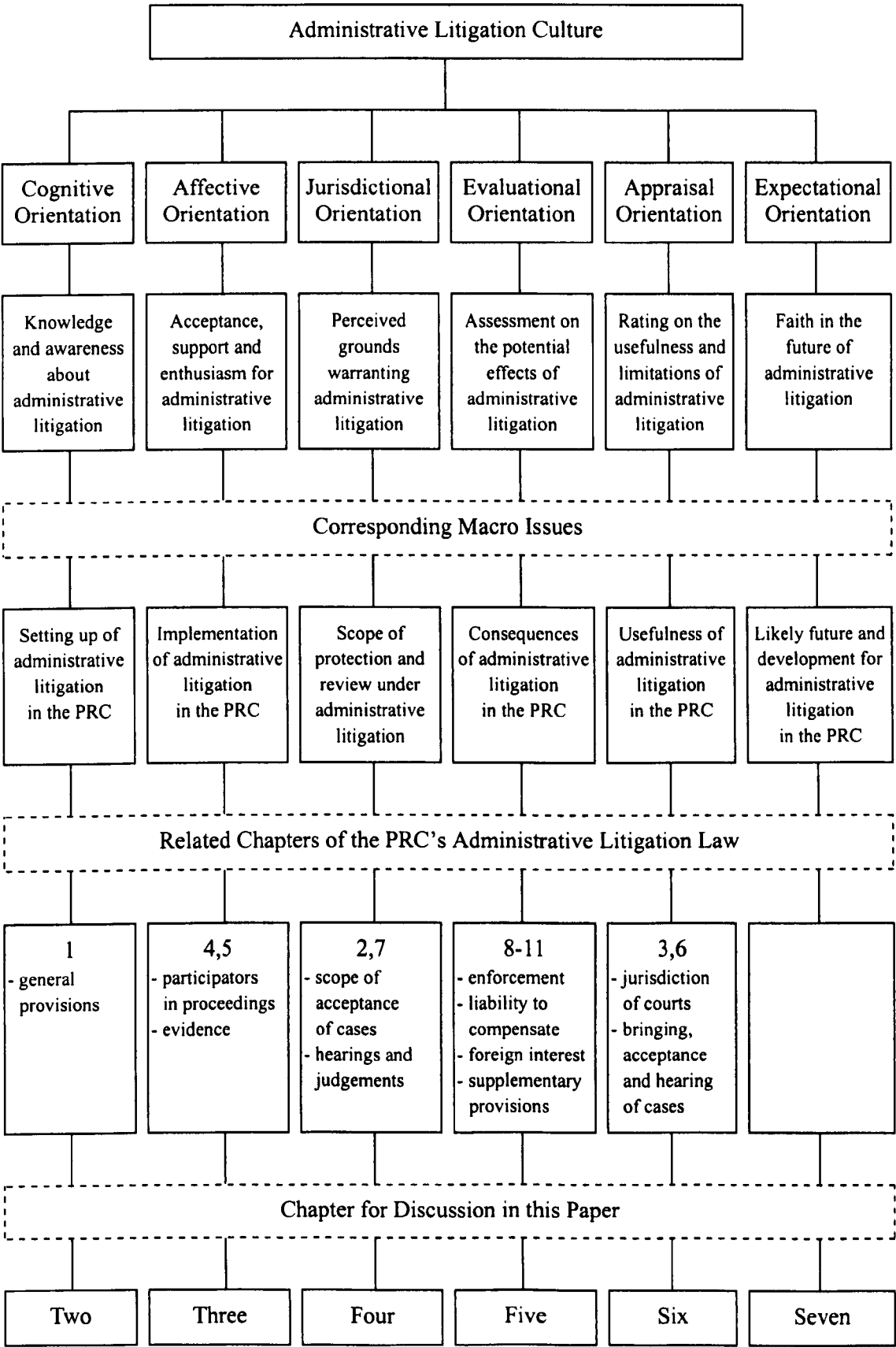
Figure 1.9 Relationship between Micro and Macroanalysis of Administrative Litigation



The theoretical framework of this study is summarised in Figure 1.10 below.

Related to the framework, research hypotheses and questions of this study are postulated and, based on the framework, empirical research methodology and survey questionnaire are designed. Finally, the framework also sets the themes for discussion in the subsequent chapters.

Figure 1.10 Theoretical Framework of this Study



D. Research Hypotheses and Questions

In no society is there a single uniform administrative litigation culture, and in all administrative litigation institutions there is a fundamental distinction between the culture of the ruled and that of the rulers. Different people are likely to have different combinations of psychological orientations towards administrative litigation. An overall parochial and apathetic administrative litigation culture is surely not favourable to the development of administrative litigation. A significant difference between the administrative litigation culture of the ruled and that of the rulers is also not favourable to the development of administrative litigation and to the improvement of ruled-rulers relationship by means of administrative litigation.

The development of the administrative litigation and the improvement of the ruled-rulers relationship with the help of administrative litigation, viewed in terms of administrative litigation culture, involve the existence of some basic understanding, supportive feeling, relevant jurisdictional idea, positive evaluation, affirmative appraisal, and optimistic expectation towards the administrative litigation. The existence of these psychological orientations may not be alone sufficient but is certainly important and indispensable.

According to the above hypotheses, this research sets out to investigate the administrative litigation culture of the Chinese ruled and rulers in terms of their cognitive, affective, jurisdictional, evaluational, appraisal, and expectational orientations towards administrative litigation in the PRC. There are seven basic research questions in this study and each of them will be dealt with in each of the following seven chapters, respectively:

1. How much do the ruled and rulers know about the PRC's administrative litigation?
2. How well do the ruled and rulers accept the PRC's administrative litigation?
3. What is the scope of protection and review expected by the ruled and rulers under administrative litigation?
4. How do the ruled and rulers evaluate the consequences of administrative litigation?
5. How do the ruled and rulers assess the usefulness of administrative litigation?
6. How do the ruled and rulers expect the future of administrative litigation in the PRC?
7. What is the administrative litigation culture of the ruled and rulers in the PRC?

E. Research Procedures

1. Research Methodology

This is a cultural study of administrative litigation in the PRC and, in particular, the administrative litigation culture of selected groups of the ruled and rulers in the mainland. The research methodology employed for this purpose includes literature reviews, empirical sample surveys, personal interviews, and attendance at court hearings.

The literature reviews examined related legislation promulgated by the People's Congress on administrative litigation in the PRC; explanatory papers issued by the Supreme People's court on interpretation of the Administrative Litigation Law; State Council and government orders in response to the introduction of the administrative litigation institution; court bulletins and legal casebooks concerning administrative litigation court hearings and law case reports; Chinese newspapers from 1990 onwards covering news about the PRC's administrative litigation; as well as journals, major books on the subject, monographs, and dissertations for general reference on the issue of administrative litigation. As a whole, this literature helped

provide the necessary primary and secondary information on the background, legislation development, implementation process, public response, major controversies, previous studies, and law case materials concerning the PRC's administrative litigation.

Empirical sample surveys by means of questionnaire interviews were conducted to gather a sufficient pool of quantitative data in structured format for statistical analysis. The questionnaire covered all aspects of the culture model and corresponding research questions to be investigated to support discussion in and completion of the research. Samples of individual household proprietors, representing the ruled, and government officials, representing the rulers, were interviewed in the Beijing municipality to provide views on the PRC's administrative litigation for comparative analysis.

Personal interviews were conducted in the mainland during the whole period of research. Initial interviews at the early stage of research helped solicit the background information about implementation of administrative litigation in the mainland since 1990 and set the stage for the empirical surveys. Subsequent interviews helped verify the empirical survey findings and collect more in-depth

materials for qualitative discussion. Three major groups of people were interviewed for different perspectives. State officials from the judiciary and the executive were interviewed to understand their on-the-job comments and personal experience with the execution and impact of the administrative litigation institution from a ruler's perspective. Individual household proprietors were interviewed to obtain their appraisals and feelings about the institution from a ruled's perspective. In addition, Chinese mainland scholars and academics specialising in administrative litigation were interviewed to reflect the intellectual observation and analysis of administrative litigation in the PRC from a commentator's point of view.

Finally, personal attendance at administrative litigation court hearings was carried out to observe the actual proceedings of administrative litigation in the courts. This may not be directly related to any of the specific research questions, but it can help provide better insight and understanding of how the ruled and rulers actually perform and behave in administrative litigation on the legal platform.

2. Specific Procedures

The research, conducted on a part-time basis, extended over a period of six

years. It started off with the preparation stage, which lasted for about one year when the research idea was formulated. The actual research work began with a year's literature reviews together with some initial interviews conducted in Beijing to clarify the issue under study. The subsequent empirical surveys began with questionnaire design and a pilot study, which took eight months to complete. Another round of interviews was conducted afterwards to collect more information and materials. Analysis of the pilot study results required almost half a year to complete, but the data proved to be very useful and the exercise also helped improve design of the questionnaire and plan for the full surveys. Ten months of actual empirical studies in Beijing on the ruled and rulers yielded a total of 890 cases of successful interviews. Post-study data analysis, writing-up, supplementary interviews and literature reviews, attendance at court hearings, and review of relevant law cases took another 16 months.

The specific research procedures are summarised in Table 1.1 below.

Table 1.1 Specific Research Procedures

Sept. 93 – April 94	Research idea formulation and enrollment with Warwick
May – June 94	Initial literature search and review
June 94	Initial interviews in Beijing
July 94 – April 95	Supplementary literature search and review
May 95	Questionnaire design – first draft
June 95	Questionnaire – second draft
August 95	Questionnaire – third draft
October 95	Pilot study with third draft
November 95	Interviews in Beijing
January – May 96	Pilot test data analysis and report writing-up
June 96	Questionnaire design - final version
June – August 96	Full survey on individual household proprietors
Oct. 96 – March 97	Full survey on government officials
April 97 – Feb. 98	Full survey data analysis and supplementary literature review
January & October 98	Attendance at court hearings
March 98 – October 99	Writing-up thesis

3. Research Samples

The research looks at both the ruled and rulers at the two ends of administrative litigation, hence the empirical surveys target both the PRC's citizens and government officials. However, it is obviously not possible to study all the 1.2 billion PRC's citizens nor the 8,000,000 government officials. When defining the specific target groups for study, several factors were considered, namely, research assistance in the PRC, important sources of information for analysis, representativeness of the sample, close relation with the problems and issues under study.

The Place - Beijing

Based on my working relations and personal acquaintance with various universities and research institutes in Beijing, the capital city stood out from the other cities as a good place to conduct the survey because assistance was readily available. In addition, the entire administrative litigation was basically developed in Beijing and the Administrative Litigation Law was drafted there by a working group of scholars and experts drawn from major universities and committees based in the capital city. Beijing was the birthplace and cradle of the PRC's administrative litigation, with the earliest and longest history of administrative litigation practice. Comments of the Beijing municipal citizens and government officials on the institution and their experience with it would be instrumental for the analysis of the institution.

The Ruled - Individual Household Proprietors

When choosing different groups of Beijing citizens for survey, one of the main considerations was their likely contact with government officials and administrative actions, and thus the relevance and importance of administrative litigation to them. Various groups had been considered, including urban dwellers affected by the state's resettlement program, property developers and contractors punished by the state's

Land Management Bureau, vehicle drivers fined by traffic control officers, entrepreneurs victimised by officials of the Industry and Commerce Bureau, and individual household proprietors running their business on the streets but challenged by state officials of various branches.

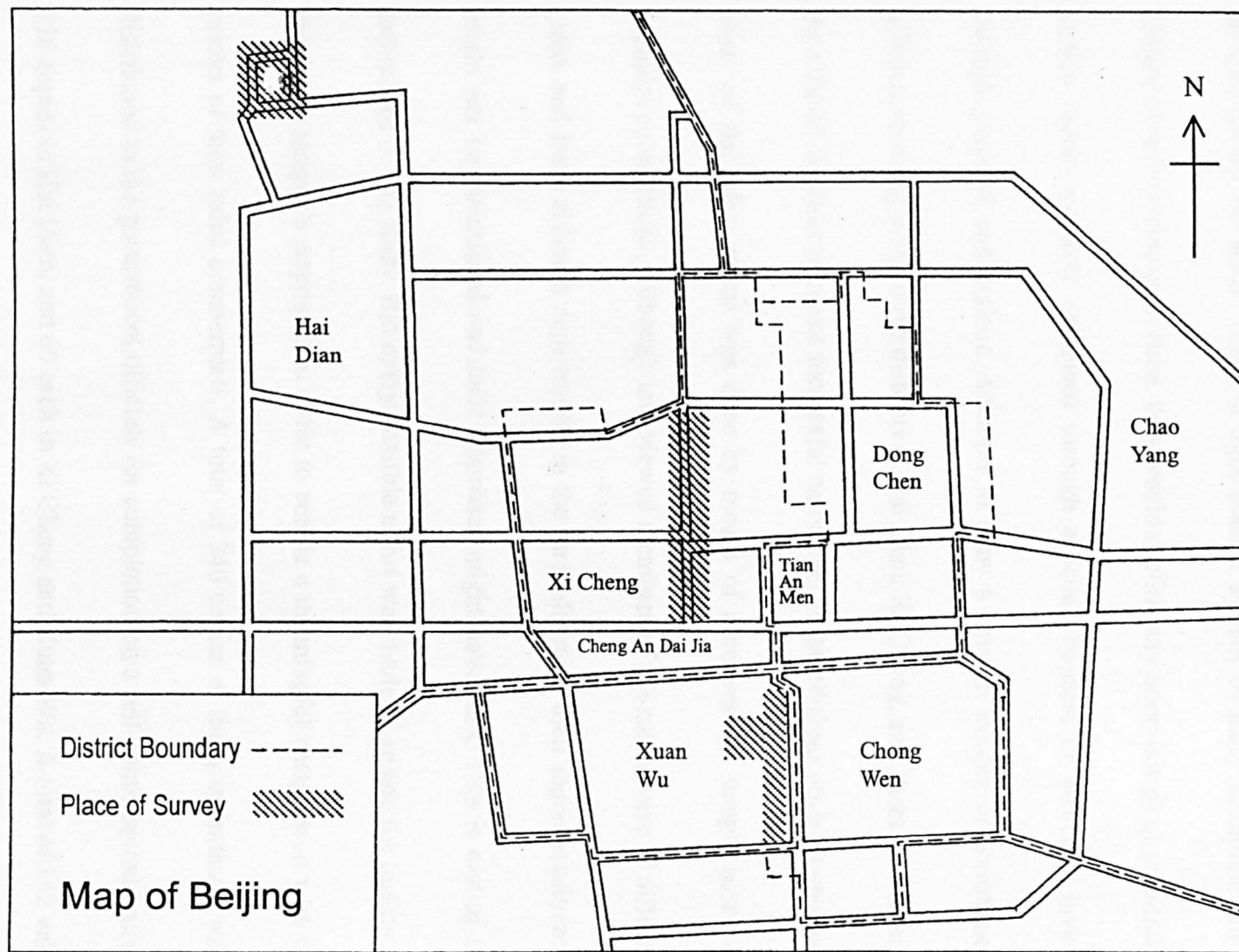
The last group of individual household proprietors was selected for study out of the rest due to their easy accessibility and close relevance to administrative litigation. They are a new group of private entrepreneurs who emerged in the 1980s during the reform era. As of September 1998, there were a total of 29,574,000 registered individual household proprietors in the country.³¹ Unlike the traditional state-run or collective enterprises, they are not subject to a state plan but operate in very much like a free market system. Most of them operate in tertiary industries like retailing, catering, servicing, or repairing, e.g. hawkers, grocers, shopkeepers, small café owners, bicycle repairers, and barbers. In their daily business, they have frequent and direct contact with state officials of various departments, like the Public Security, Environmental Protection, Industry and Commerce, Hygiene, Fire Services, etc., and they have to face different sorts of administrative actions, e.g. public peace control, waste control, licensing and duties collection, hygiene control, fire prevention inspection.

However, due to various reasons, individual household proprietors are usually not good defenders of their own rights and interests, which are easily subject to state infringement. Firstly, they are newcomers in the socialist economy and they do not have the same established political status as their state-run and collective counterparts. Secondly, due to the lack of capital, they tend to be small in size and unorganised with little collective power. Finally, they also tend to be less educated or even illiterate, hence unaware of their rights and the channels to protect their interests. Although they may not have the resources to take unlawful administrative actions to the courts, it does not mean that they are unaware of the PRC's administrative improprieties or that administrative litigation is not relevant to them. On the contrary, understanding their difficulties with administrative litigation is important for advancing the institution itself.

Beijing has over 290,000 individual household proprietors spread across its 23,000-square kilometer municipal area. To define a measurable and representative sample, the survey took a cluster sample comprising all the individual household proprietors along the main streets of three different districts of the municipality: Hai Dian, Xi Cheng, and Xuan Wu. Hai Dian represents a district of higher education institutions, Xi Cheng represents a district of modernised commercial centres, and

Xuan Wu a traditional old district of local Beijing folks. The three districts are chosen so as to better reflect the possible diverse nature and varied experience of these proprietors operating in different environments and to provide a more interesting comparative study.

Samples in Hai Dian were drawn from areas adjacent to the Renmin University and Summer Palace (頤和園). Samples in Xi Cheng were drawn from three main streets of the district: Xi Dan Da Jie (西單大街), Xi Si Da Jie (西四大街), and Xin Jie Kou Da Jie (新街口大街). Those of Xuan Wu were from four main streets of the district: Qian Men Da Jie (前門大街), Yong Ding Men Da Jie (永定門大街), Zhu Shi Kou Da Jie (珠士口大街), and Da Peng Lan Jie (大柗欄街) (see map of Beijing below). A total of 738 successful questionnaire interviews were conducted.



The Rulers - Government Officials

Rulers in this research refer to the state's government officials, but they are not an easy group for study. Under a tight control system of party discipline and a culture of information protection, they would decline any interview or questionnaire survey unless properly organised through official channels or privately invited through personal connections. Attempts to draw a random sample of government officials working in the three districts of Hai Dian, Xi Cheng, and Xuan Wu through the official channels were not successful on two accounts. Without other alternatives, study of the rulers group was done by means of a convenient sample based on personal connections. Although interviewed members of the rulers were of different ranks and from different departments in the three districts, their representativeness might not be maintained and their responses might have bias. This is one of the limitations in this study. But every possible effort was made to ensure the quality of the rulers sample's responses in order to enable a meaningful comparison with the results of their ruled counterparts. A total of 240 copies of the questionnaire were distributed to the government officials for completion on a self-administered basis – 120 copies in Hai Dian, and 60 each in Xi Cheng and Xuan Wu. A total of 152 valid cases were collected and the response rate was 63 per cent.

4. Instrumentation

Sources used in Literature Reviews

Libraries of the City University of Hong Kong, Chinese University of Hong Kong, and Beijing Administrative College were intensively used to support literature search and reviews. The University Service Centre of the Chinese University of Hong Kong was extensively surveyed, especially its comprehensive collection of Chinese journals and newspapers. Libraries of other Hong Kong universities were used when they had materials not found in the above-mentioned libraries.

Data base CD-Roms were also used to identify useful printed or electronic materials, especially overseas research theses. This helped provide the latest information on development of the research topic.

Questionnaire used in Empirical Survey

A structured questionnaire was used in the empirical surveys of both individual household proprietors and government officials (see appendices 2 and 3 for the translated questionnaires). The questionnaire was designed according to the

theoretical framework and aimed to collect data needed for discussion of each of the research questions. It was in Chinese and in simple language so as to ensure easy and clear understanding by the respondents. The wording of each question was kept as concise and precise as possible to enhance accuracy in response.

The questionnaire contained an introductory paragraph at the beginning for explaining its purpose, after which followed seven sections of questions on the six orientations of administrative litigation culture (i.e. cognitive, affective, jurisdictional, evaluational, appraisal, and expectational orientations) and the respondent's personal particulars. The questions were basically the same for both sample groups except one question (question 3) about cognitive orientation and some of the questions about their personal particulars so as to better reflect their different status. A total of 46 questions were set for individual household proprietors and 45 for government officials (see Table 1.2 below).

Table 1.2 Number of Questions in Each Section of the Questionnaire for the Two Samples

	Proprietors	Government Officials
Cognitive orientation	5	5
Affective orientation	6	6
Jurisdictional orientation	7	7
Evaluational orientation	6	6
Appraisal orientation	8	8
Expectational orientation	5	5
Respondent's personal particulars	9	8
Total	46	45

Local Coordinator

To facilitate execution of the empirical survey, a local coordinator was employed in Beijing to assist in the logistical part of the survey. He was Dr. Mao Shou Long, a lecturer in the Institute of Public Administration, Renmin University of China. His assistance was invaluable but largely in the logistical part of the survey, e.g. giving comments on the draft questionnaire in respect of its sensitivity and use of language, printing copies of the questionnaire for both the pilot and full survey, recruiting and training interviewers for the survey of individual household proprietors and arranging their interview with the selected proprietors, and coordinating the empirical survey on government officials. Dr. Mao was acting in his private capacity during the process and was paid for his effort.

Interview Notes

Interview notes were kept for all interviews so as to ensure accuracy when the contents of interviews were used for discussion in this thesis.

Computer Software used in Data Analysis

SPSS 7.5 was used to process and analyse data obtained from the empirical survey. It was an accurate and efficient tool for basic frequency calculation, bi-variate cross-tabulation, as well as correlation analysis. With the help of the software, a comprehensive and in-depth quantitative analysis was conducted to support discussion of the research questions.

5. Pilot Study

Pilot studies were conducted on individual household proprietors and government officials in October 1995. There were five objectives for the pilot study on the proprietors group: to train the interviewers and standardise their understanding and interpretation of the questionnaire questions; to find out the response rate; to verify the availability and condition of the sample groups; to examine the clarity and adequacy of the questionnaire; and to validate feasibility of

the survey procedure.

The pilot study on the proprietors group was useful and successful, with all the above five objectives fulfilled. A pool of eight questionnaire interviewers, who were research students of the Institute of Public Administration in Renmin University of China, were recruited and trained. A total of 41 individual household proprietors were approached; 33 were successfully interviewed, and the response rate was 80.5%. It was found that this sample group was quite easily available, with the participants basically willing to accept being interviewed and open enough to express their opinions. As for the questionnaire, it was found to be clear, easily understandable, and easy to fill out (see appendix 4). Some minor amendments were made on the questionnaire based on the pilot test experience. No major problem was encountered in the research procedure. All these tests proved to be very helpful for the subsequent full survey on individual household proprietors. The full survey indeed resembled in many ways the pilot study.

The pilot study on government officials was not the same. Because of the limited size and special conditions of the sample frame, the pilot study did not aim to achieve all the above same five objectives. Interviewers were not required for this

group. Availability and condition of the study target and the research procedure were also not tested. The main objectives of the pilot study were to test the clarity and appropriateness of the questionnaire, and to try out the comparative study of their result with that of the individual household proprietors. As such, the pilot study did not directly approach officials working in the three selected districts, but used a convenient sample of 23 officials attending a training course in the Public Administration Institute of the Renmin University of China as a substitute. The study was smoothly completed and the comparative analysis was successfully conducted.

6. Data Collection

Literature Research

Voluminous Chinese literature materials were acquired from bookstores and publishers in Beijing and other mainland cities. These materials included related legislation, explanatory papers on interpretation of these legislation, legal journals and casebooks, major books and research reports on the subject written or edited by mainland scholars, and departmental guidebooks for internal reference of respective civil servants. A large amount of unpublished conference papers on the subject was

also collected with the help of the local coordinator.

Empirical Survey

The empirical questionnaire surveys were conducted with the assistance of the local coordinator and the recruited interviewers. They assisted by providing comments on the questionnaire's use of language, printing copies of the questionnaire in local format, interviewing the sampled individual household proprietors in both the pilot study and full survey, and inviting government officials to participate in a self-administered survey. Their assistance greatly facilitated the progress of the surveys and reduced resistance from the interviewees, thereby ensuring successful completion of the surveys. In the process, their work was compensated with payment and monitored to ensure the good quality of the survey results, e.g. checking mistakes and correcting errors.

Personal Interviews

Interviews with a large pool of mainland scholars, government officials, and individual household proprietors in Beijing were arranged through three major sources of connection: the Law Department of the Beijing Administrative College, the Public Administration Institute of the Renmin University of China, and the Law

Institute of the Chinese Academy of Social Sciences. Their connections were instrumental in carrying out the opinion polling. All the interviews were conducted on the understanding that they were for academic research purposes, and some were private conversations only. As such, the names of all interviewees would not be directly identified or related to any specific piece of information.

Attendance at Court Hearings

Attendance at court hearings was arranged with the assistance of the Law Department of the Beijing Administrative College. Two administrative litigation hearings were attended in the Beijing Hai Dian District People's Court.

F. Limitations of the Study

There are several limitations in this study.

The first limitation is the willingness and ability of the interviewed individual household proprietors and government officials to support the survey, understand the questions asked in the questionnaire, and provide genuine heart-felt answers – in short, to provide useful data for analysis in the research. Freedom of expression has

not been unconditional in the mainland's civil liberty system. National security, public interests, party rule, collective benefit, and social stability are just some of the conditions to be observed when citizens exercise their constitutional liberty. People in the mainland may speak very differently in public and private, short and official in the former, expositive and critical in the latter. Design and wording of the questionnaire, interview procedure, training of interviewers, and subsequent data analysis have all been undertaken with due concern to this limitation so as to minimise its seriousness and unfavourable effect. Obviously, it is a constraint on work of this kind and its reality needs to be recognised. All possible steps have been taken in the research to minimise its significance, and it is believed that reasonably open and honest responses have been received.

The second limitation relates to the sample size. A sample of 738 individual household proprietors from three districts certainly cannot be said to represent all 290,000 individual household proprietors in Beijing, or the 29,574,000 individual household proprietors in the whole country, or the 1.2 billion members of the ruled in the PRC. Neither can 152 interviewed government officials be said to represent the entire 8,000,000 civil servants or the PRC's rulers in general. Given resources and other constraints, this study is just an initial and exploratory discussion of the

issue to be further verified by subsequent similar studies.

The third limitation ties in with the research scope. As pioneering research, this is a cultural study of the PRC's administrative litigation, i.e. the cultural dimension of the issue only. Other dimensions like historical background, institutional arrangement, behaviour of participants, politics and economics of the institution, are not the main focus of this research. That does not mean that they do not deserve to be studied, but that is a task for later researchers.

As with the ruled-rulers relationship in any country, the Chinese situation is no less complex, and this poses the fourth limitation. The ruled and rulers have a multifaceted relationship which exists not only in the legal context but also involves political, economic and social interaction. Similarly, resolution of their conflict is not confined only to litigation in court, but there are other channels as well, such as, in the case of China, administrative reconsideration, assistance from representatives of the People's Congress, plus other informal means like resorting to personal connections, and even illegal means like using money in bribery. The subject of this study, the PRC's administrative litigation, only represents one aspect in the Chinese ruled-rulers relationship and cannot be taken to represent the others.

Chapter 2 Cognitive Orientation and the Setting up of Administrative Litigation in the PRC

The introduction of administrative litigation in the PRC marks the beginning of a long-awaited new era in respect of the contemporary Chinese ruled-rulers relationship. When students of China studies accused the early PRC's authority of being a totalitarian tyrant, it was easy by then to expect rulers' abuse of the ruled to the worst extent but very difficult to envisage the rulers granting a legal review system for the ruled to withstand corrupt rulers. Yet, such top-down deliverance may not live up to its promise if the ruled do not know about it, do not like to use it, do not know how it works, or do not believe it works, and if the rulers in practice do not respect it, do not work with it, or do not abide by it. The institution of administrative litigation will be left as a window display if there is not a positive and participatory administrative litigation culture among the ruled. Likewise, the institution of administrative litigation will be left severely constrained if there is a negative and defensive administrative litigation culture among the rulers. In short, the administrative litigation culture of both the ruled and rulers is one of the fundamental factors determining the successfulness of administrative litigation in the PRC to improve the two parties' relationship.

This chapter begins to look at the cognitive orientation of the ruled and rulers to see how much they know about the PRC's administrative litigation, following its implementation almost a decade ago. The following sections will first project the macro context by reviewing the setting up of administrative litigation in the PRC and chapter one of the Law, then present and discuss the cognitive orientation of the ruled and rulers samples, respectively.

A. The Setting up of Administrative Litigation in the PRC

Bringing the rulers under rule has never been easy. Administrative litigation in the PRC has gone through two difficult stages before arriving at its present state. It went through the two stages of an unborn baby from 1949 to 1981 and a boarding child from 1982 to 1988, before finally becoming a grown-up standing on its own feet after 1990.

In the first stage, administrative litigation was an unborn baby, made as early as 1949 when the new republic was found, but it existed only nominally since then in the mainland and was not delivered until more than thirty years later. Like any generous inaugural pledge, both the para-constitution, Common Agenda, (Article 19)

of September 29, 1949 and the first formal PRC's constitution (Article 97) of September 20, 1954 provided for administrative litigation in the mainland. The former stated clearly that people and their organisations had the right to litigate against unlawful action of state organs and government officials in the people's procuratorates and the people's courts. The latter allowed citizens to complain against unlawful action of government officials through the state, implicitly including the judiciary. A similar provision was repeated in all subsequent constitutions of 1975 (Article 27), 1978 (Article 55), and 1982 (Article 41). However, the promise was never delivered, as there was no subsequent legislation or effort to actualise an administrative litigation institution in practice. The reasons for this were because legal development as a whole during this leftist period had not been taken seriously by the authorities, and the image of cadres as genuine servants of the people was widespread during the immediate years after victory, which made the problem of power abuse unbelievable and an institution of administrative litigation unnecessary.

Thirty years of patience or ignorance were only long enough to see an irresponsible delivery with administrative litigation attached to civil procedure, as if conflicts between the ruled and rulers were no more than some kind of dispute

among the common people. The turning point for this second stage was the ten-year Cultural Revolution, which was tragic enough to reveal the disastrous consequences of extreme political struggles, result in a broken relationship between the ruled and rulers, denounce the uninstitutionalised methods of conflict resolution, and above all, confirm the danger of the rule of man. Post-Mao attempts to resurrect the legal system for disciplined rule of man and organised resolution of conflict brought forth, among others, the PRC's Civil Procedure Law on March 8, 1982, which contained a statement saying that, "This Act is applicable to the administrative cases which the people's courts hear according to the stipulation of the law." (Article 3.2) As such, administrative litigation in the PRC entered the second stage of no more than a boarding child attached to the civil procedure host mother.

When compared with the first stage, in the second stage certain progress and concrete experience (negative included) in administrative litigation were made during these seven years of uneasy attachment. More than 130 laws and regulations were passed during this period, providing the people's courts with jurisdiction over administrative cases. Between 1983 and mid-1988, there were a total of 21,914 first hearing administrative cases and 1,217 appeal cases in the whole country. The first PRC's administrative litigation court was also established in November 1986 at the

Gu Luo District People's Court of Hunan province. This provided a pioneering but rudimentary trial with administrative litigation in the PRC. Even so, the experiment was destined to fail due to the fundamental difference between administrative and civil cases. The civil procedure practice of requiring the accuser to bear the burden of proof imposed an insurmountable onus on the ruled when trying to sue the rulers because the latter had monopolised access to the power and information of administrative acts. Not surprisingly, administrative litigation through civil procedure invariably failed, with not much actual benefit for the ruled.¹ It was only when the PRC's Administrative Litigation Law was completed and promulgated that administrative litigation entered a new stage, with its own identity and on its own feet.

Drafting of the PRC's Administrative Litigation Law was not only difficult but also highly controversial. Drafting work began with the calling of an Administrative Legislation Research Group (行政立法研究組) on April 10, 1986 at the direction of the Commission of Legislative Affairs (法制工作委員會) under the National People's Congress Standing Committee.² The group was formed by leading administrative law experts in the capital, who bore the full responsibility of the drafting work.³ But the authorities remained the gate-keeper. Different expectations

were seen right from the beginning. The authorities expected the experts to prepare an overall administrative basic law (行政基本法) for the country, but by March 1987, after one year of hard work, the members reckoned it impossible at that stage and hence resorted to considering specific administrative laws, with the Administrative Litigation Law as the first of a series, followed later by the State Compensation Law (1994) and then the Administrative Penalty Law (1996).⁴

Difficulties and controversies did not cease with the set of agenda for legislation work. The group took another half year to produce a modest and rough preliminary draft to test the comment of the authorities. Review by the Commission of Legislative Affairs only marked the beginning of many more revisions and consultations to follow. Different parties were consulted at different stages. First was examination by the immediate authorities, then by central officials, members of the people's congress, members of the lower level people's congresses, and later, consultation by officials of the judiciary and procuratory, local government officials, law experts of other provinces and institutes, as well as the public. Because the sensitive and delicate issue of the ruled-rulers relationship was involved and diverse interests were affected, consultation and examination of various sorts on the draft extended over a period of 20 months. New problems were raised at each occasion of

consultation, compromising of opinions was required at each stage, and the draft went through many changes over the period (see Table 2.1 below). A good example to illustrate this is the change on the proposed scope of acceptance of cases, from accepting both specific and abstract administrative acts to accepting only the former after a series of consultations and revisions.⁵

Table 2.1 The Drafting Process of the PRC's Administrative Litigation Law

Date of Draft	Kind of Draft	No. of Chapters	No. of Articles
30 August 87	Preliminary Draft	N/A	31
13 July 88	Draft for Consultation	8	51
8 October 1988	Draft for Examination by NPCSC*	8	49
4 November 1988	Draft for Public Discussion	7	49
30 November 1988	Revised Draft	10	72
24 January 1989	Amended Draft	10	68
1 March 1989	Draft for Examination by NPC#	11	44
4 April 1989	Present Legislation	11	75

* National People's Congress Standing Committee # National People's Congress

Source: Interview Respondent no. 11, Beijing, June 1994.

Fortunately, this stage of the drafting and consultation work took place in the wake of the memorable Thirteenth National Party Congress, where administrative litigation legislation was enlisted as crucial to the central theme of political and legal reform. This provided the formidable drafting work a favourable environment and important support to get through all the consultations and difficulties. At the end, it

took as long as two years and as many as eight major drafts before the present Administrative Litigation Law of the PRC was finalised and adopted on April 4, 1989 at the Second Session of the Seventh National People's Congress.⁶ To allow time for resolving various practical difficulties with its implementation, the Law was extended for another one and a half years before it became effective on October 1, 1990 (see appendix 1 for contents of the law). In the legislation history of the PRC so far, this Law took the longest time to draft and to become effective, fully reflecting the difficulties and controversies involved in the work. It is interesting then to see what the final outcome is after all these compromises and modifications.

B. First Diagnosis of the Administrative Litigation Law

To provide the necessary contextual background for discussion of the cognitive orientations of the ruled and rulers samples later in this chapter, an initial diagnosis of the PRC's Administrative Litigation Law will be provided, particularly its basic purposes and functioning principles found in Chapter One of the Law. Other details of the Law, like the scope of acceptable cases, the courts' jurisdiction, and the litigation procedure, etc., will be examined in later chapters that deal with such topics (see theoretical framework in Table 1.10).

The Law consists of 11 chapters and 75 articles, the shortest of its kind when compared with its civil and criminal counterparts, probably because of its being more specific in nature and more confined in scope. Nevertheless, it draws an end to the former confusing situation, where administrative litigation provisions are scattered over different laws and administrative rules. In a single piece of legislation, the Law provides a clear set of guidelines and a comprehensive set of stipulations for the practice of administrative litigation in the territory. By nature, the Law is a procedural code for the arbitration of substantive rights and interests of the ruled and rulers. It stipulates in specific terms, the scope of acceptable cases in administrative litigation, jurisdiction of the courts, admissible parties in the litigation process, the rules on evidence, the procedures for first and second hearings, and the executing procedures for court rulings. Table 2.2 below enumerates the contents of the Law in brief.

Table 2.2 Contents of the PRC's Administrative Litigation Law in Brief

Chapter	Title	No. of Articles
1	General Provisions	10
2	Scope of Acceptance of Cases	2
3	Jurisdiction	11
4	Participants in Proceedings	7
5	Evidence	6
6	Bringing and Acceptance and Hearing of Cases	6
7	Hearings and Judgments	22
8	Enforcement	2
9	Liability to Compensate for Infringement of Rights	3
10	Administrative Proceedings Involving Foreign Interests	4
11	Supplementary Provisions	2
	Total	75

Of central importance to a procedural code is the purpose of legislation, which sets the direction for the whole piece of legislation and defines the mission for all following provisions to fulfill. As stated in its Chapter One Article One, the Law aims to:

- (1) *ensure the just and prompt hearing of administrative cases by the people's court;*
- (2) *protect the lawful rights and interests of citizens, legal persons and other organisations; and*
- (3) *uphold and supervise administrative authorities in exercising their administrative authority in accordance with the law.*

The first objective highlights the important and decisive role of the court in the pursuit of the just and prompt hearing of administrative cases, but in practice, it is more a means to achieve the following two more fundamental objectives that focus correspondingly on the ruled and rulers. Basic to administrative litigation is the protection of the rights and interests of the ruled. An administrative litigation law cannot do without this mission. But the weight of importance in the Law is not and has never been intended to be placed one-sidedly on this end of the ruled-rulers relationship. Equally important, or even more important, is the rationalisation of the administrative authority in respect of the other end of the relationship. As mentioned above, the PRC's administrative litigation is a concession of the rulers for the purpose of improving its rule in the name of obeying the law. The tricky point with this offer is whether the law to be obeyed serves the rulers or guides the rulers.

Qualification in admitting the rule of the Law by the rulers can be found immediately in Article Two, which lists the components of administrative litigation:

- (1) citizens, legal persons or other organisations;*
- (2) administrative authorities or their work personnel;*
- (3) specific administrative acts; and*
- (4) lawful rights and interests of (1) being infringed by (3) of (2).*

Besides excluding illegal persons and organisations, as well as unlawful rights and interests, from protection of the Law, abstract administrative acts (commonly known as administrative rules and decisions) and non-administrative authorities and their personnel are also deliberately exempted from the rule of the Law. Administrative litigation in the PRC is applied on the rulers in a very narrow sense. Only those establishments and officials under commission of the State Council, i.e. *the administration*, are subject to the rule of the Law, and only in so far as to their specific administrative acts, not their abstract decisions. The judiciary, legislature, Communist Party, military, and their personnel, their acts and decisions, are all legally and practically free from the rule of the Law.

Another concealed condition on the rule of the Law concerns the extent of independent adjudication by the courts as provided by its Article Three. Interference by administrative authorities (members of the rulers), social groups and individuals (members of the ruled) in the courts' adjudication of administrative cases is modestly ruled out under the provision. But according to the PRC's constitution and within the Chinese political system, the courts, in their exercise of adjudication authority, have to submit to the leadership of the Communist Party and be accountable to their supervising People's Congresses. Independent adjudication of

administrative as well as other law cases in the PRC cannot be mistaken as exclusive or free adjudication by the courts. The embracing political system still has its impress on the country's administrative litigation, and the rulers, as beneficiaries of that political system, can easily maintain their privilege under the new establishment.

Within the confines of the above qualifications, the Law sets out to define the procedure for administrative litigation under a number of functioning principles. Seven articles out of ten in the first chapter of the Law are common principles of litigation procedure that also apply in civil and criminal cases (see Table 2.3 below). They are the operational guidelines for the courts and all parties to follow in general when a case is pursued. Guidelines for other specific issues, like acceptance of cases, jurisdiction of courts, identity of parties, admission of evidence, hearings and enforcement, are provided in subsequent chapters of the Law.

Table 2.3 Common Functioning Principles of Procedure

Article	Litigation Principle
3	Independent adjudication by the court
4	Facts as basis and law as criterion in hearing
6	Practice of withdrawal, open trial and one appeal
7	Equal legal status of the parties
8	Use of native languages for ethnic groups
9	Debate by the parties in the litigation process
10	Legal supervision by the procuratorates

Notwithstanding the confines imposed when the Law was drafted, the above functioning principles laid a good foundation for the practice of administrative litigation in the PRC. They represent a major step forward in the Chinese legal system because they constitute a genuine judicial review institution in the country established specifically for administrative litigation – an institution that is comparable in many ways to those found in many modern democratic countries.⁷ These principles also consummate the Chinese procedural law system, which now comprises not only the civil and criminal branches but also the administrative trunk. If there is flaw in the practice of administrative litigation in the PRC, it may not be due to a fault with the provisions of the Law, but to perplexity resulting from innate deficiencies or problems in the course of implementation and execution.⁸

The above diagnosis might be a bit difficult for the common citizens or even

the front-line government officials to comprehend. So, how much do the Chinese ruled and rulers know about the PRC's administrative litigation? Let's turn to look at the cognitive orientation of the ruled and rulers samples to see how much understanding they claimed to have about the Administrative Litigation Law and institution of the PRC.

C. Cognitive Orientation of the Surveyed Individual Household Proprietors

Cognitive orientation is the first component and the cognitive basis of administrative litigation culture. It stretches over different magnitudes and forms, relates in different manners with other administrative litigation orientations, sows the seeds for an overall administrative litigation culture, and not least of all, varies among individuals. Five questions were asked of the 738 successfully interviewed individual household proprietors to measure how much they knew about the PRC's administrative litigation in general, and to locate the cognitive basis of their administrative litigation culture in particular (see Table 2.4 for the questions). Their responses are presented and discussed below. Firstly, the overall level and pattern of their cognitive orientation, i.e. the general cognitive basis of their administrative litigation culture, are outlined. Secondly, the relationship between different aspects

(i.e. internal relationship) of their cognitive orientation is diagnosed to explicate their cognitive foundation. Thirdly, the relationship between their cognitive and other orientations (i.e. external relationship) is examined to unveil the role of cognitive orientation in their overall administrative litigation culture. Finally, cognitive orientations of different sub-groups of proprietors, sorted by their personal particulars, are analysed and compared to illustrate how cognitive orientation varies among individuals of the ruled sample. The sub-group of proprietors who had sued the government is also surveyed where appropriate to expound that distinctive feature of cognitive orientation among the proprietors.

1. Overall Level and Pattern of the Proprietors' Cognitive Orientation

As much as three-quarters of the interviewed individual household proprietors had a basic awareness of the PRC's administrative litigation and Administrative Litigation Law – 70.8 per cent of them had learned about the existence of the institution by which citizens could sue the government, 75.3 per cent had heard of citizens actually suing the government, and as many as 77.1 per cent had heard of the Law (see Table 2.4 below). This compared very favourably with the result of a local investigation reported in the *People's Daily* earlier in 1991, soon after

promulgation of the Law. That investigation found that 60 per cent of the interviewed citizens did not know there was administrative litigation, 30 per cent had heard about it but did not believe it was true, and only 10 per cent claimed to have knowledge about it.⁹ The main reason for the lack of awareness among the citizens at the early stage was due to insufficient promotion by the government after it passed the Law and created the institution.¹⁰ It seemed that the rulers recognised the need for setting up administrative litigation in the country, but were not too eager to bring the institution to the ruled or the ruled to the institution. Perhaps it was because the idea of an administrative litigation was not originally *from the masses*, and hence, there was no obligation on the rulers to go back *to the masses*. As for those ruled in the rural and inland areas, the lack of awareness was even more serious, reflecting the general regional disparity in the mainland.¹¹ However, as suggested by the present survey, awareness of the PRC's administrative litigation among the ruled had been significantly improved over the period and five years did not appear to be too long for such an achievement.

Table 2.4 Responses of the Proprietors to the Five Cognitive Orientation Questions

			Yes	No	s.d.
1	Have you heard of cases about citizens suing the government?	q	555	182	0.43
		%	75.3	24.7	
2	Have you heard that citizens can now sue the government?	q	521	215	0.46
		%	70.8	29.2	
3	Have you yourself sued the government?	q	36	701	0.22
		%	4.9	95.1	
4	Have you heard of the "Administrative Litigation Law"?	q	565	168	0.42
		%	77.1	22.9	
5	Have you studied the "Administrative Litigation Law"?	q	151	582	0.41
		%	20.6	79.4	

s.d. = Standard deviation;

q = Frequency.

"Missing value" not included in the calculation of standard deviation.

However, although awareness might have improved over time with the increase in opportunities to hear of the institution, in-depth understanding of and personal participation in it might not. As for the latter, results of the survey showed much lower positive answers than for the former. Only 20.6 per cent of the proprietors had studied the Law, most likely through the newspaper, and five per cent had personal experience of using administrative litigation. This points to a limited and passive cognition among the proprietors in the sense that their cognition is confined to what is communicated to them from outside and has not been translated into solid individual understanding through personal perusal of relevant legislation or experience in practice. It may be argued that given the long tradition of authoritarian rule and the near absence of previous administrative litigation, it is already a great

leap forward for the ruled to be simply aware that they can now sue the government, not to mention having an in-depth understanding and personal experience.¹² Besides, 20 per cent of the ruled having studied the Law and five per cent having sued the rulers can already be considered high by the standards of many European countries. But those European countries do not have such serious and endemic administrative improprieties as the PRC, and the tradition of authoritarianism should not be an excuse for the rulers to beguile the ruled into continual subjection and inertia. In fact, many of the interviewed proprietors admitted that although they had heard of the institution, they actually knew very little about it, reflecting that their cognition was indeed limited.¹³ It is true that cognition about the Administrative Litigation Law and institution is becoming more common among the interviewed individual household proprietors, but that cognition is largely oriented towards only a basic level of awareness whilst in-depth knowledge is still restricted to a small section of the proprietors. In a word, most respondents of the ruled sample had acquired the cognitive basis of an administrative litigation culture but that cognitive basis was not yet very strong and solid.

As a whole, due to the extremely high level of negative responses by the proprietors on two questions, their overall cognitive orientation scores for the five

questions resulted in negative responses (50.3 per cent) being slightly higher than positive responses (49.7 per cent) (see Table 2.5 below). This reminds us that although the cognitive orientation of the proprietors is quite wide in reach, it is equally limited in depth.

Table 2.5 Overall Cognitive Orientation Scores of the Proprietors

		Yes	No
Overall Cognitive Orientation	tq	1828.0	1848.0
	aq	365.6	369.6
	%	49.7	50.3

tq = Total Frequency; aq = Average Frequency.

2. Internal Relationship of the Proprietors’ Cognitive Orientation

Internal relationship refers to the relationship between different aspects of the respondents’ cognitive orientation. This is reflected by the relationship between their responses to different cognitive orientation questions. To begin with, the proprietors’ answers to the first two cognitive orientation questions about awareness of the administrative litigation institution were found to be very closely related, with the phi correlation coefficient as high as 0.56 (see Table 2.6 below).¹⁴ To a lesser extent, their answers to the last two cognitive orientation questions on knowledge about the Law were also mutually related, with a phi coefficient of 0.20. Answers to the first

two cognitive orientation questions were also significantly related to that of the fourth but not the fifth one, meaning that proprietors who had heard of the institution were also likely to have heard of the Law but had not necessarily studied the Law.

Table 2.6 Phi Correlation Coefficients for the Internal Relationship of the Proprietors' Cognitive Orientation

Q	01	02	03	04	05
01		.56		.15	
02	.56			.23	
03					.17
04	.15	.23			.20
05			.17	.20	

Row highest in shade, average phi coefficient = 0.13.
Significance level at .05, 2-tailed.

In fact, those proprietors who had studied the Law tended to be those who had sued the government, as indicated by the significant correlation between the sample's answers to cognitive orientation questions 3 and 5. A more elaborate examination by cross-tabulation on the responses of the small sub-group of 36 proprietors who had sued the government did reveal that they had 30 per cent more than the entire sample in having studied the Law, plus 10 per cent more in having heard of the institution (details of the extensive cross-tabulation results are not displayed due to space constraints). This testified that those sampled ruled who had

sued the rulers would tend to have a higher level of administrative litigation cognition than those who hadn't. These findings reconfirm the above observation that cognitive orientation of the proprietors mostly stops at the gross basic awareness level. More in-depth cognition would not stem from a pure interest to learn, casual exchange of conversation, or concern for the country's legal development, but practical and imminent reasons like preparation for litigation. In fact, the long period of underdevelopment and inferiority of the law and legal system in the mainland, the passive tolerance of the ruled to infringement by the rulers, and the uncertain outcome of the newly introduced administrative litigation, are all factors for the lack of incentive among the ruled to learn more about the details and related legislation of administrative litigation, leading to a limited and passive cognitive orientation among them.¹⁵

When compared with answers to questions in the other orientations, the internal relationship of answers by the proprietors to questions in this cognitive orientation was the lowest, with an average internal correlation phi coefficient of only 0.13. The main reason for this was that the responses of the proprietors to the cognitive orientation questions were contradictory, rather than the questions themselves being contradictory. Whilst the five cognitive orientation questions are found to be valid

and consistent as measures of the respondent’s cognitive orientation, with an Alpha coefficient of 0.50, the proprietors’ cognitive orientation scores and hence, the cognitive basis of their administrative litigation culture, are indeed not particularly strong and agreeing.

3. External Relationship of the Proprietors’ Cognitive Orientation

The proprietors’ cognitive orientation was found to have a rather close external relationship with their other five administrative litigation orientations by the phi correlation analysis (see Table 2.7 below). It suggests that cognition of administrative litigation, however basic and weak, is important to the configuration of the overall administrative litigation culture of the ruled sample.

Table 2.7 External Relationship of the Proprietors’ Cognitive Orientation

Orientation	Relationship
Affective	Very Strong
Jurisdictional	Fairly Strong
Evaluational	Slight
Appraisal	Fairly Strong
Expectational	Slight

Specifically, the proprietors’ answers to cognitive orientation questions 1 and 2

about their awareness of the administrative litigation institution were closely related with their answers to questions in the affective orientation (phi correlation coefficients from 0.13 to 0.30), and fairly strongly with that in the jurisdictional and appraisal orientations (phi correlation coefficients from 0.12 to 0.26, see Table 2.8 below). On the other hand, their answers to question 4 were closely related with that in the affective, evaluational, appraisal, and expectational orientations, with phi correlation coefficients from 0.13 to 0.30. Answers to question 5 were also found to be closely related with answers to questions of the affective, evaluational, and expectational orientations, with phi correlation coefficients from 0.13 to 0.34. The results suggest that an initial awareness of the institution is associated with and helpful to the building of positive affective, jurisdictional and appraisal orientations towards administrative litigation, whilst a more specific knowledge about the Law can further help the proprietors to comment in respect of the other orientations, including evaluational and expectational orientations.

Table 2.8 Phi Correlation Coefficients for the External Relationship of the Proprietors' Cognitive Orientation

	Affective Orientation						Jurisdictional Orientation							Evaluational Orientation							Appraisal Orientation							Expectational Orientation				
Q	6	7	8	9	10	11	12	13	14	15	16	17	18	19	20	21	22	23	24	25	26	27	28	29	30	31	32	33	34	35	36	37
1	22	20	14	16	14		14		15		13	14	14	15						15	13	17		14	15	18	15		16			
2	24	30	17	16	18	14	12	14	16	12	15	15								19	20	23	15	17	23	20	15	14	15			
3										14													12	15					15			
4		24	18	15	19	30	14	13		18	15			13	15	19	17	14		21	14	16	19	17	23		26		16	18	16	19
5	13	14	13		15	34			16	16	14			14	13	16		16	15									18	15	14	17	17

Phi coefficients at 2 decimal points, significance level at .05, 2-tailed.

As a whole, the proprietors' answers to cognitive orientation question 3 about their experience with suing the government were found to have no significant relationship with their other administrative litigation orientations, suggesting statistically that personal experience was not a necessary pre-requisite for their responses in the other orientations. However, the same elaborate examination by cross-tabulation on the responses of the small sub-group of 36 proprietors who had sued the government revealed that this sub-group had more positive affective, evaluational, appraisal and expectational orientations. They had more positive answers in all affective orientation questions, especially in their support of, care about, and acquaintance with the institution. They also had better evaluational orientation with respect of the administrative litigation in protecting citizens' rights and interests, pushing the rulers to work according to the laws, and reducing the

cases of power abuse. For all appraisal orientation questions, the 36 proprietors gave more affirmative answers than the rest. They had more confidence in the institution and the courts. They were also less worried about implementation of the institution and likely revenge by the rulers. Lastly, they also had slightly better expectational orientation about the future of the institution, but they were not too sure with judicial independence as a necessary condition.

After all, cognitive orientation appears to be the sampled ruled's first step to the building of their other administrative litigation orientations. However, different aspects of their cognitive orientation have quite distinct associations with their other orientations, leading to a different overall administrative litigation culture. It follows that promoting the general administrative litigation cognition of the ruled is important for strengthening their overall administrative litigation culture, and cultivating a more in-depth understanding of the country's administrative litigation is instrumental to increasing their further confidence in it. In particular, the experience with litigation is found to be an important factor that will bring a higher level of cognitive orientation as well as a stronger and more positive administrative litigation culture for members of the ruled.

4. Cognitive Orientation among Different Sub-Groups of Proprietors

Having presented above the cognitive orientation of the proprietors as a whole, this section will analyse and compare the cognitive orientation of specific proprietors' sub-groups according to their personal particulars. Statistical analysis of the proprietors' responses by means of cross-tabulation shows that their personal particulars have varying degrees of relationship with their cognitive orientation (details of the extensive cross-tabulation results are not displayed due to space constraints). Four of the personal particulars showed little association with cognitive orientation of the proprietors, three were slightly correlated, and only two were found to have a significant relationship (see Table 2.9 below).

Table 2.9 Relationship between the Proprietors' Cognitive Orientation and Personal Particulars

Relationship with Cognitive Orientation	Personal Particulars
Insignificant	Gender Working Years Kind of Business Working District
Slightly Significant	Age Political Status Income
Significant	Residency Education Level

Sub-Groups with Insignificant Relationship

Four of the proprietors’ personal particulars, i.e. gender, working years, kind of business, and working district, were found to have little association with their cognitive orientation. Proprietors of different genders, with different working years, in different businesses and working districts all exhibited the general cognitive orientation pattern of good initial knowledge but poor in-depth understanding. The cognitive orientation scores of both gender sub-groups and all three working district sub-groups were very much similar. Whereas, a random distribution of cognitive orientation scores was found among sub-groups of different working years and kind of businesses. The lack of correlation of these four personal particulars with the proprietors’ cognitive orientation was confirmed by their phi correlation coefficients, which showed no significant correlation (see Table 2.10 below).

Table 2.10 Phi Correlation Coefficients for the Proprietors’ Cognitive Orientation and Personal Particulars

Cognitive Orientation Question	Gender	Age	Political Status	Working Years	Kind of Business	Residency	Working District	Income	Education Level
1						-.11			
2						-.15			
3			.12						
4						.11		.16	.15
5		.13	.18	.15					.14

Significance level at .05, 2-tailed.

Sub-Groups with Slightly Significant Relationship

Though having the same general pattern of good initial knowledge but poor in-depth understanding, proprietors of different age sub-groups displayed slight differences in their cognitive orientation level and pattern. Younger proprietors tended to be more aware of the institution whilst older proprietors tended to be better informed of the Law. It seemed that the channel and focus of cognition for different age sub-groups were different. Younger proprietors seemed to engage more in social interaction and could maintain a good sense of public awareness, but they were less patient about learning the details of the legal stipulations. Older proprietors seemed to prefer newspapers as sources of information and were more ready to focus on the contents of the Law printed therein.¹⁶ The phi correlation coefficients for different age sub-groups showed no significant correlation with the cognitive orientation, except in question 5 (see Table 2.10 above).

Under the general pattern of good initial knowledge but poor in-depth understanding, proprietors with different political status demonstrated an interesting difference in their cognitive orientation pattern and level. Proprietors with Communist Party membership showed contrasting scores in that they had the highest percentage who had heard of and studied the Law, but also had the highest

percentage who claimed not to have heard of the institution. This might be related to their membership obligation of having to study party and state documents in the course of supporting the party and state organs. Proprietors without party membership were the group least informed of the Law. Political status seemed to be related with the proprietors' cognitive orientation towards administrative litigation in a rather arbitrary manner. Party membership appeared to work like a double-edged sword that cut in two opposite directions. The phi correlation coefficients for this personal particular showed a significant relationship with questions 3 and 5 (see Table 2.10 above). Since there were only two proprietors belonging to democratic parties, their scores were regarded as not representative and were not statistically feasible to include in the discussion.

The majority of the proprietors belonged to lower income groups, i.e. earning below RMB1,000 per month. However, a higher monthly income did seem to be associated with a difference in the level and pattern of cognitive orientation among the proprietors. The lower income group tended to be less aware of both the institution and the Law, whereas the higher income group tended to be more aware of the institution, though not better informed of the Law. The highest income group also had a much higher percentage who had sued the government but the lowest

percentage who had studied the Law. It seemed that the newly rich were much more ready and had more resources to employ legal aids such as lawyers to protect their rights and interests against administrative infringement without themselves having to leave their business to attend to the details of litigation. The least wealthy might not necessarily be the least common victims of administrative impropriety, but more wealth did seem to be associated with a greater chance of having conflict with the administration and resolving the conflict through the legal process. The phi correlation coefficients showed that income was significantly related with question 4 about hearing of the Law (see Table 2.10 above).

Sub-Groups with Significant Relationship

Similar to the age difference, the proprietors without Beijing municipal residency tended to have better awareness of the administrative litigation institution, whereas those with residency were likely to be better informed of the Law. The reason behind this might also be that non-residents relied more on social interaction for information and therefore learned about the PRC's administrative litigation. However, they were either less concerned with the details of the legal stipulations, or they tended not to spare the resources to learn them. On the other hand, the residents had a more stable environment in which to attend to newspapers and other printed

materials as sources of information from which they could keep themselves abreast of the Law propagated therein. A moderating factor was education level. From cross-tabulation, it was found that a higher percentage of proprietors with residency had completed upper secondary school or above than proprietors without residency. The opposite was found for lower level education. Education level was another personal particular of the proprietors that had a significant relationship to their level and pattern of cognitive orientation (see discussion below).

On the other hand, both residency sub-groups were similar in not having sued the government but the residents lagged behind the non-residents by a small margin on that. An elaborate analysis by cross-tabulation confirmed that relatively more proprietors in the sub-group of 36 who had sued the government were non-residents, with 15.3 per cent more than in the entire sample (details of the extensive cross-tabulation results are not displayed due to space constraints). The reason for that might be due to the residents' ties with the locality and hence the greater burden and risk in pursuit of litigation against local officials. Indeed, absence of local ties and readiness to move was an advantage if the ruled were to sue the rulers. The phi correlation coefficients for residency showed significant correlations with responses to cognitive orientation questions 1, 2 and 4 (see Table 2.10 above).

Education level was not associated with a significant difference in the proprietors' experience with suing the government, but it did correlate with a significant difference in their awareness of both the institution and the Law. Respondents with a higher level of education were likely to have a better knowledge of the institution and the Law. This is understandable, because education can increase a person's ability to comprehend information and broaden his public awareness. This was clearly demonstrated by the phi correlation coefficients for education level, which showed a significant correlation with cognitive orientation questions 4 and 5 (see Table 2.10 above).

In summary, under the general pattern of good initial knowledge but poor in-depth understanding, education level acted as an instrumental factor and residency acted as an environmental factor, causing variations in the general level and pattern of the proprietors' cognitive orientation towards administrative litigation. Age as a personal factor, political status as a political factor, and income as an economic factor also caused additional differences, though to a lesser extent. The correlation intensity of these five factors with the proprietors' cognitive orientation was more or less the same (phi coefficients between 0.1 to 0.2). Other personal particulars were found to have insignificant correlation with the proprietors' cognitive orientation.

D. Cognitive Orientation of the Surveyed Government Officials

Similar to the proprietors, the same five cognitive orientation questions were asked of the 152 successfully interviewed government officials to measure how much this rulers sample knew about the PRC's administrative litigation, and to locate the cognitive basis of their administrative litigation culture. However, cognitive orientation question 3, about experience of the respondents with administrative litigation, was rephrased from asking whether the proprietors had sued the government to asking whether the officials had participated in administrative litigation, so as to reflect their different role in litigation. For illustration and comparison purposes, the responses of this rulers sample are presented below in the same way that responses of their ruled counterparts are presented above, but the discussion is more from a comparative perspective.

1. Overall Level and Pattern of the Officials' Cognitive Orientation

The cognitive basis of the interviewed officials' administrative litigation culture was much more deep-set and in unison, as shown in their responses. An impressive 92.1 per cent of them had heard of citizens suing the government and knew about

Table 2.12 Overall Cognitive Orientation Scores of the Officials

		Yes	No
Overall Cognitive Orientation	tq	551	205
	aq	110.2	41.0
	%	72.9	27.1

tq = Total Frequency;

aq = Average Frequency.

The above results were not surprising given the sampled rulers' official capacity, task requirements and on-the-job training. It would only be astonishing if the officials' administrative litigation cognition was below that of the proprietors, as that would signify real problems with the PRC's administrative litigation. From the beginning, administrative litigation was put on the agenda by the rulers and the institution was largely their creation. Their role in setting up the country's administrative litigation gave them the advantage and leading edge in understanding the subject. Subsequently, if anyone were to get acquainted with the institution after its implementation, it would be the rulers because they needed to know how to prevent being sued by the ruled. Understanding the institution and the Law would be of interest to the rulers as much as to the ruled, if not more. But of more importance were the resources available to acquire knowledge of the subject.

In the first year after promulgation of the Law but before its becoming effective, compulsory training sessions, each of two weeks' duration, were organised for most

of the state officials. Using Beijing as an example, a total of 150,000 law enforcement officers were trained during that year.¹⁷ The training was delivered not only by senior officials of respective departments but also by legal experts from major institutes. Besides introducing the newly established administrative litigation institution and provisions of the Administrative Litigation Law, the core contents of the training were on how to fit in with administrative litigation from the rulers' perspective and on how to minimise the risk of being sued in daily operations.¹⁸ Although effects of the training and the learning of the trainees might vary, such organised training and the necessary resources had never been available to the ruled.

On the other hand, given the much smaller number of the rulers as compared to the ruled, the former's chance of experiencing administrative litigation was predictably much higher than the latter's. To sum up, although not many of the officials had personal experience with administrative litigation, their knowledge of it was mostly well secured, and the cognitive basis of their administrative litigation culture was much stronger and coherent than that of their proprietor counterparts.

2. Internal Relationship of the Officials' Cognitive Orientation

The situation of the officials in this respect was quite similar to that of the individual household proprietors. The officials' answers to the first two questions about cognition of the institution proved to be mutually related, like their answers to the last two questions about cognition of the Law (see Table 2.13 below). Answers to the first two cognitive orientation questions were also significantly related with that of the fourth question, but only partially with that of the fifth question, meaning that officials who had heard of the institution were also likely to have heard of the Law but not as likely to have studied the Law. Their answers to question 3 were not related to that of the other questions in this orientation, other than negatively with question 4, suggesting that their experience with administrative litigation was not necessarily related with their knowledge of the institution or the Law.

Table 2.13 Phi Correlation Coefficients for the Internal Relationship of the Officials' Cognitive Orientation

Q	01	02	03	04	05
01		.46		.36	
02	.46			.36	.38
03				-.20	
04	.36	.36	-.20		.22
05		.38		.22	

Row highest in shade, average phi coefficient = 0.20.
Significance level at .05, 2-tailed.

Although the officials had a much higher level of administrative litigation cognition, their knowledge was not tied with their need to prepare for litigation, but rather with their training on how to avoid the rise of litigation. No wonder, then, that there was a negative relationship between their answers to cognitive orientation questions 3 and 4. After all, administrative litigation cognition remains largely a private matter for each individual proprietor but the same becomes an institutional concern for the officials as a collective. Whilst cognitive orientation of the ruled can be limited and passive, that of the rulers needs to be better ingrained and more proactive due to their difference in roles and other practical reasons.

When compared with answers to questions in the other orientations, the internal relationship of answers by the officials to questions in this cognitive orientation was also the lowest, but not particularly low and in fact a little bit higher than that of the proprietors. The average internal correlation phi coefficient for cognitive orientation answers of the officials was 0.20, slightly higher than their proprietor counterparts. The main reason for having the lowest level of internal relationship in this cognitive orientation was also due to the disproportionately low percentage of government officials who had been involved in administrative litigation. This reflects the fact that administrative litigation is still not popular for either the ruled or the rulers.

3. External Relationship of the Officials’ Cognitive Orientation

Unlike their proprietor counterparts, the officials’ cognitive orientation had a very weak relationship with all their other administrative litigation orientations (see Table 2.14 below).

Table 2.14 External Relationship of the Officials’ Cognitive Orientation

Orientation	Relationship
Affective	Small
Jurisdictional	Small
Evaluational	Small
Appraisal	Small
Expectational	Small

Specifically, there is only a marginal relationship between the officials’ answers to two cognitive orientation questions and their answers to the other administrative litigation orientations. Firstly, their answers to cognitive orientation question 2 about having heard that the institution existed were marginally related with their answers to questions in the affective, jurisdictional, evaluational and appraisal orientations (see Table 2.15 below). Secondly, their answers to cognitive orientation question 5 about having studied the Law were marginally related with their answers to questions in the jurisdictional and evaluational orientations. Their answers to

cognitive orientation questions 1, 3 and 4 were found not related with their answers in the other orientations. This seems to suggest that, unlike the ruled, the rulers do not tie their feelings and ideas about administrative litigation with their knowledge of it, and that their administrative litigation cognition as a whole is not necessarily a prerequisite for their building of the other administrative litigation orientations. The official policy and position of the rulers on the setting up and implementation of administrative litigation may outweigh individual member’s knowledge as a factor in configuring those members’ overall administrative litigation culture.

Table 2.15 Phi Correlation Coefficients for the External Relationship of the Officials’ Cognitive Orientation

	Affective Orientation						Jurisdictional Orientation						Evaluational Orientation						Appraisal Orientation						Expectational Orientation							
Q	6	7	8	9	10	11	12	13	14	15	16	17	18	19	20	21	22	23	24	25	26	27	28	29	30	31	32	33	34	35	36	37
1								31			30	32					25		29													
2	34				29	50	34				33		30	48		28	33					32	42	39	31		33		37	37		
3		32										33	31																			30
4							31							32																		
5					34	47			50	37	33			29		30		28							28		35		32	23		

Phi coefficients at 2 decimal points, significance level at .05, 2-tailed.

However, it should be noted that a detailed cross-tabulation analysis on the answers of the sub-group of 14 officials who had participated in administrative litigation did reveal that such experience was important to the rulers, as much as to

the ruled (details of the extensive cross-tabulation results are not displayed due to space constraints). The experience was important not in bringing a higher level of cognitive orientation but in causing a more positive overall administrative litigation culture, especially in respect of the evaluational, appraisal and expectational orientations. The 14 officials had significantly more positive answers than both their colleagues and the respective proprietors sub-group to questions in these three orientations. It is beyond doubt that the rulers, like the ruled, will become more convinced of the positive effects and usefulness of administrative litigation after they have actual experience with administrative litigation and then will become more ready to agree with the need for further development of the institution.

4. Cognitive Orientation among Different Sub-Groups of Officials

After discussing the cognitive orientation of the interviewed officials as a whole, the cognitive orientation of various sub-groups of officials according to their personal particulars will be analysed and compared below. Statistical analysis of the officials' responses by means of cross-tabulation shows that their personal particulars have a varying degree of relationship with their cognitive orientation and the results are summarised in Table 2.16 below (details of the extensive cross-

tabulation results are not displayed due to space constraints). When compared with relationships found in the proprietors' sample, gender, working years and working district appeared to be more important for the officials' cognitive orientation, age and education level were equally important, and political status and income were less important.

Table 2.16 Relationship between the Officials' Cognitive Orientation and Personal Particulars

Relationship with Cognitive Orientation	Personal Particulars
Insignificant	Political Status Income
Slightly Significant	Gender Age Working Years
Significant	Department Working District Education Level

Sub-Groups with Insignificant Relationship

Political party affiliation and monthly income did not relate with a major difference in the officials' cognitive orientation level or pattern. Although phi correlation coefficients of the two personal particulars showed a significant relationship with answers to cognitive orientation questions 1 and 3 (see Table 2.17 below), cross-tabulation of these two personal particulars with answers to the five

cognitive orientation questions showed a basically random distribution of scores, suggesting no particular relationship with the officials’ cognitive orientation. The only exception is correlation between income and answers to cognitive orientation question 3, which suggests that the higher income sub-group, and hence more senior officials, tend to have more experience with administrative litigation.

Table 2.17 Phi Correlation Coefficients for the Officials’ Cognitive Orientation and Personal Particulars

Cognitive orientation Question	Gender	Age	Political Status	Working Years	Department	Working District	Income	Education Level
1			.31				.32	
2								
3							.45	
4								
5								

Sub-Groups with Slightly Significant Relationship

Both male and female officials were equally well aware of the litigation institution, with an average of over 90 per cent who knew about it. But significantly more male officials had participated in litigation and marginally more female officials were better informed of the Law. The basic level of cognition did not vary too much between the two genders. This was confirmed by the lack of association as

indicated by the phi correlation coefficients (see Table 2.17 above). The official principle of gender equality ensured equal opportunity and treatment of both genders in on-the-job training about relevant administrative litigation knowledge and laws. Female officials, being younger and more junior than their male counterparts in the sample, appeared to be more diligent in studying the Law. However, it seemed that the more mature and senior male officials, as opposed to their female counterparts, were more likely to be selected and appointed by the defending departments to appear in courts as representatives.

Officials of different age sub-groups also shared a good basic level of cognition of the institution, also with an average of over 90 per cent. However, there was a clear tendency for older officials to be more likely to have studied the Law and participated in litigation. As many as 90 per cent of those officials between 41-50 years of age had studied the Law and participated in litigation, as compared to only 67.9 and 5.4 per cent respectively for those between 18-30. This indicated again the preference of the authorities to deploy older and maturer officials to deal with legal arbitration. It was not surprising that details of the Law were a matter of concern for the older age sub-group. However, the phi correlation coefficients had not indicated a significant correlation between age of the officials and their cognitive orientation

answers (see Table 2.17 above).

Seniority in terms of working years slightly correlated with cognition level of the officials, particularly for those with over 10 years of service. Significantly more of those with 10 or more years of seniority, and hence much older in age, had heard of the institution, studied the Law, and participated in administrative litigation. Other than that, no major difference was identified across the five sub-groups. The phi correlation coefficients also indicated no significant correlation between working years of the officials and their answers about cognition of administrative litigation (see Table 2.17 above).

Sub-Groups with Significant Relationship

The general trend of a high cognition level prevailed among officials of different departments, but individual variances could still be identified. Public Security officials had the highest level of cognition about the institution, followed by their colleagues in Industry and Commerce Department, and the Hygiene Department. On the other hand, the Hygiene Department was the one with the highest percentage of officials who had heard of and studied the Law, followed by the Industry and Commerce Department and Fire Services Department. Officials

with the lowest level of awareness of both the institution and the Law worked for the Department of Environmental Protection, and they were also the least involved in administrative litigation. Officials with the Industry and Commerce Department had a significantly higher percentage of having participated in litigation, followed by their colleagues in the Civil Affairs Department. The different kind and nature of work in different departments seemed to have a significantly different relationship intensity with administrative litigation, leading to different cognition levels among officials performing different administrative functions. The phi correlation coefficients for this personal particular did not reveal significant findings on a relationship with cognitive orientation (see Table 2.17 above).

As for their place of work, officials of the Xuan Wu district showed a comparatively higher level of cognition in terms of having heard of the institution, the Law, and having participated in litigation. Officials of Hai Dian district had the lowest level of cognition, except for knowledge about the Law. Yet, these differences were not very significant and the phi correlation coefficients for this personal particular were not statistically significant (see Table 2.17 above).

The last personal particular showing a significant correlation with the officials'

cognitive orientation towards administrative litigation was education level. However, it was found that a higher level of education tended to relate negatively with a lower level of cognition, whether that related to awareness of the institution, the Law, or experience with litigation. This was probably due to the special condition of the Chinese rulers. Many of the present senior officials who, because of age, rank, and years of service, were candidates to represent their department in litigation duties, tended not to have completed a high level of education since the country was war-torn during their school years. Following recent reforms of the civil service, more graduates were recruited into the government, but these new recruits and junior members were not yet ready for such demanding duties. Therefore, although education level was significantly correlated with the officials' cognitive orientation, important intervening factors had to be taken into consideration. This also explained the nil result of phi correlation analysis for this personal particular (see Table 2.17 above).

In summary, the result of phi correlation measures did not suggest a significant relationship between the officials' personal particulars and cognitive orientation. The fact seemed to be that on-the-job training concerning the administrative litigation institution and the Law had ensured a common acquaintance with the two

areas among the officials. Different personal backgrounds seemed not to be an important factor in this connection. However, cross-tabulation studies still revealed interesting variances alongside the general consistency, especially in respect of participation in litigation. Male officials of greater age and higher seniority were much more likely to have participated in administrative litigation, especially those working in the Industry and Commerce Department and in the Xuan Wu district. Political status and income were not particularly important to the officials' cognitive orientation, which statistically related negatively with education level.

E. Summary

This chapter reports and discusses the cognitive orientations of the 738 interviewed individual household proprietors and 152 surveyed government officials. By so doing, the cognitive basis of the two parties' administrative litigation culture can be established. It began with a brief introduction on the setting up of the PRC's administrative litigation and an initial diagnosis of the PRC's Administrative Litigation Law. This serves to provide a contextual background to examine how much the ruled and rulers know about the PRC's administrative litigation, which is the first research question of this thesis. The PRC's administrative litigation was set

up in April 1989 by the rulers for the ruled to seek redress in the law courts for infringement by the rulers' unlawful specific administrative acts. However confined in the design and function of the PRC's administrative litigation, the institution signifies a revolutionary change in the PRC's ruled-rulers relationship.

To comprehend the legal stipulations and actual practice related with the newly established administrative litigation is not an easy task for members of both the ruled and the rulers. Based on their own needs, situation, and available resources, the two parties have established their own respective cognitive orientation about the country's administrative litigation, which has been in place for almost a whole decade. Not surprisingly, the two parties' cognitive orientations are very different, whether in terms of the general level and pattern, specific combination, unique features, importance to the overall administrative litigation culture, and relation with the personal background of the respondents.

Cognitive orientation of the ruled sample is more limited, passive and incoherent, but is an important foundation for their overall administrative litigation culture. Better-educated and non-resident members of the ruled have a better general cognitive orientation, and personal experience with suing the government is

important for their cognitive orientation formation. Cognitive orientation of the rulers sample is more in-depth, proactive and solid, but their overall administrative litigation culture is not necessarily tied to their cognitive orientation. More mature and senior members of the rulers have a better cognitive orientation, especially through participation in actual litigation.

No major deficiency or problem is identified with the two parties' cognitive orientation. The cognitive basis of their administrative litigation culture is found to be sufficient for supporting the building of their other administrative litigation orientations. The fact that less than five per cent of the proprietors had sued the government was not because the sampled ruled were cognitively unprepared, nor because there were few cases to file, but largely due to practical reasons like costs and difficulties with litigation. It seems that bringing the ruled to the institution is much more difficult or much less successful than bringing the institution to the ruled in the PRC. It also seems that there are still many obstacles in bringing the institution into full swing for soothing the uneasy ruled-rulers relationship in the country. The next chapter will report the implementation problems with administrative litigation in the PRC and the second administrative litigation orientation of the sampled ruled and rulers, i.e. the affective orientation.

Chapter 3 Affective Orientation and the Implementation of Administrative Litigation in the PRC

When the PRC's administrative litigation was set up in 1989, it was given a worthy mission to fulfill in a hostile environment. The result is high moral consent in support of the course of action but serious operational obstructions in the process of achieving it. After all, it is easy for both the ruled and rulers to envisage the possible benefits of administrative litigation and readily accept its establishment. Yet, it is much less easy for the two to recognise the many practical obstacles in the course of its implementation. Discordance is found in the mainland where positive affective orientation prevails among the ruled and rulers, but the actual implementation of administrative litigation is highly problematic and far from satisfactory. It seems that a supporting affective orientation is necessary but not sufficient for successful implementation of administrative litigation in the mainland. In this chapter, the ruled and rulers samples' affective orientations will be presented and discussed, together with an investigation on the implementation record of administrative litigation in the PRC since 1990. By doing so, we can ascertain not just how well the two parties accept the PRC's administrative litigation but also how well such a feeling ties in with the latter's implementation.

A. The Implementation of Administrative Litigation in the PRC

Development of the PRC's administrative litigation is found to be even more difficult and problematic than gaining its birth. Two thousands years of authoritarian imperial rule had produced a highly entrenched ruled-rulers dichotomy and a corresponding set of ideologies, norms, structures and practices that served to reinforce such a dichotomy. Forty years of socialist rule since 1949 dismantled many of the feudal traditions but had, in contrast, further strengthened the ruled-rulers dichotomy and the rule of the rulers. Such a cultural and structural macro-environment has not changed very much before and after establishment of the PRC's administrative litigation. The established norms and practices suppress the ruled, empower the rulers, and preempt the rule of law now as much as in the past. Many of the ruled are still not used to taking legal measures, confronting the rulers, and protecting their interests. Many of the rulers are still not used to answering to the ruled, examination by the courts, and abiding by the laws. The ruled are still all too weak and loosely organised to protect themselves. The rulers are still all too powerful and well established to be challenged. The legal system is still not well established enough to provide relief. And the age-old ruled-rulers dichotomy is still too secure to be shaken. When litigation is to be pursued, there are, indeed, many

obstacles to be overcome, high costs to be paid, and great risk to be shouldered. In the mainland, it is one thing to accept administrative litigation in principle and quite another to pursue it in practice.

1. A Brief Review of the PRC's Administrative Litigation Implementation

According to the statistics published by the Chinese authorities, there has been continuing and substantial growth in the number of administrative litigation cases accepted by the people's courts in the PRC after the formal setting up of administrative litigation in 1990. The amount of first hearing administrative cases surged by 30 per cent in 1990 and by 97 per cent in 1991 (see Table 3.1 below). In particular, 40 per cent of the 1990's annual total, i.e. 5258 out of 13006 cases, were received in the last three months from October to December when the Law became effective, which represented a 96 per cent increase over the same period in the previous year.¹ This indicates that the citizens did have high hopes when administrative litigation was set up in 1989 and were eager to make use of it when it became effective in 1990. The rise slowed down to five per cent and two per cent in the following two years, respectively, suggesting there were indeed operational problems that were unrecognised before but that soon manifested when the

institution was put into effect. Yet, the annual growth rate picked up again from 25 per cent in 1994 to 49 per cent in 1995, and 52 per cent in 1996. Although the rise in 1997 was not as great, the number of first hearing administrative cases had already increased by more than nine-fold after eight years of implementation, reaching a total of 90,557 cases in 1997 as compared to 9,934 cases in 1989. As a matter of fact, more and more members of the ruled are using the new institution to protect their rights and interests against illegal infringement by the rulers. The PRC's administrative litigation has not been left just as a window display but has, indeed, opened up a new era in the Chinese ruled-rulers relationship since 1990.

Table 3.1 First and Second Hearing Administrative Cases in the PRC, 1988-1997

	<u>First Hearing Cases</u>				<u>Second Hearing Cases</u>			
	<u>Accepted</u>		<u>Closed</u>		<u>Accepted</u>		<u>Closed</u>	
	Cases	Annual % Rise	Cases	Annual % Rise	Cases	Annual % Rise	Cases	Annual % Rise
1988	8573		8029		2356		2218	
1989	9934	15.88	9742	21.34	2908	23.43	2888	30.21
1990	13006	30.92	12040	23.59	3431	17.98	3325	15.13
1991	25667	97.35	25202	109.32	6930	101.98	6708	101.74
1992	27125	5.68	27116	7.59	8334	20.26	8273	23.33
1993	27911	2.90	27958	3.11	7426	-10.90	7584	-8.33
1994	35083	25.70	34567	23.64	7699	3.68	7672	1.16
1995	52596	49.92	51370	48.61	9694	25.91	9536	24.30
1996	79966	52.04	79537	54.83	11454	18.16	11365	19.18
1997	90557	13.24	88542	11.32	12754	11.35	12684	11.61

Source: Law Yearbook of China, 1989-1998 (% added)

Besides an increase in the number of cases accepted, there has also been a rapid expansion in the scope of cases accepted. During the years before and immediately after the establishment of the PRC's administrative litigation, administrative cases involved mainly administrative sanctions by two administrative agents: Public Security and the Lands Departments. During those years, the ruled would use administrative litigation only as the last resort and only when the issues involved were vital, e.g. birth control, personal liberty, land distribution, and house clearance. It was not so much a virtuous fight for the ideal of righteousness or rule of law as it was a hard struggle for survival at all costs. However, other kinds of administrative cases were soon accepted by the people's courts, which were developing the ability to assist members of the ruled who were suffering from various kinds of administrative infringement. For example, administrative litigation courts in Beijing had already expanded their scope of accepted cases to 45 categories in 1994, whereas other provinces and municipalities were not too far behind.² Among all the administrative cases accepted in the PRC in 1990, public security and lands cases each contributed to around one-third of the total, but the two had fallen to only 16 per cent and 14 per cent respectively in 1997 (see Table 3.2 below). On the contrary, "other" types of cases had increased substantially from 34 per cent to 61 per cent over the same period. It is obvious that the PRC's administrative litigation has

developed from serving only two kinds of administrative complaints in the past, to offering a wide range of protection to the ruled in the mainland recently. It also suggests that the Chinese ruled are becoming more ready to resort to administrative litigation on a diverse range of issues involving their personal rights and interests apart from sheer survival.

Table 3.2 Types of Administrative Litigation First Hearing Cases, 1990-1997

	<u>Public Security</u>		<u>Lands</u>		<u>City Building</u>		<u>Industry & Commerce</u>		<u>Hygiene</u>		<u>Others</u>		<u>Total Cases</u>
	Cases	%	Cases	%	Cases	%	Cases	%	Cases	%	Cases	%	
1990	4519	35	4038	31	--		--		--		4449	34	13006
1991	7720	30	8162	32	--		--		--		9785	38	25667
1992	7863	29	8330	31	--		--		--		10932	40	27125
1993	7018	25	8063	29	2038	7	571	2	456	2	9765	35	27911
1994	8624	25	7962	23	2303	7	886	3	601	2	14707	42	35083
1995	11633	22	10012	19	3062	6	1556	3	916	2	25417	48	52596
1996	15090	19	13932	17	4526	6	1486	2	1388	2	43544	54	79966
1997	14171	16	12986	14	4848	5	1817	2	1334	2	55401	61	90557

Source: Law Yearbook of China, 1991-1998 (% added)

However, despite the above growth and development, administrative litigation only constitutes a tiny portion of all the cases accepted by the people's courts and an even tinier portion of all the administrative acts taking place in the PRC. The major type of case accepted by the people's courts is civil procedure (around 60 per cent), followed by economic dispute (20-30 per cent) and criminal procedure (around 10 per cent). By comparison, administrative litigation is almost negligible, amounting

to less than one per cent before 1995 and no more than two per cent after (see Table 3.3 below). In the reality of the mainland, it is unlikely that administrative controversies are so much fewer than civil and economic disputes. The more likely reason is that the ruled in many instances do not bring administrative controversies to the courts. As reported by a Beijing high court official, among the more than ten million administrative sanctions undertaken by the 44 administrative agents in the capital each year, only less than 0.002 per cent were taken to administrative litigation.³ It seems that even when the ruled find certain administrative acts unlawful and agree that administrative litigation is the lawful channel for complaint, they still may not file the case but instead reluctantly accept those unlawful acts or deal with them by some other means. No doubt, administrative litigation is neither playing its full part in the Chinese judicial system nor providing the full strength of protection to the ruled against administrative infringements in the present-day PRC.

Table 3.3 Four Major Types of First Hearing Cases in the PRC, 1988-1997

	Administrative Litigation		Criminal Procedure		Civil Procedure		Economic Dispute		Total Cases
	Cases	%	Cases	%	Cases	%	Cases	%	
1988	8573	0.37	313306	13.68	1455130	63.53	513615	22.42	2290624
1989	9934	0.34	392564	13.47	1815385	62.31	695632	23.88	2913515
1990	13006	0.45	459656	15.76	1851897	63.49	592215	20.30	2916774
1991	25667	0.89	427840	14.74	1880635	64.81	567543	19.56	2901685
1992	27125	0.89	422991	13.86	1948786	63.88	652255	21.37	3051157
1993	27911	0.82	403267	11.81	2089257	61.18	894410	26.19	3414845
1994	35083	0.89	482927	12.21	2383764	60.26	1053701	26.64	3955475
1995	52596	1.16	495741	10.91	2718533	59.80	1278806	28.13	4545676
1996	79966	1.50	618826	11.65	3093995	58.24	1519793	28.61	5312580
1997	90557	1.71	436894	8.26	3277572	61.98	1483356	28.05	5288379

Source: Law Yearbook of China, 1989-1998

Finally, among those first hearing administrative cases accepted by the courts, the percentage of the ruled eventually winning has been around only 20 per cent over the eight years since implementation (see the Recalled and Changed columns in Table 3.4 below). The PRC's administrative litigation, despite its growth and development over the years, appears to be not particularly helpful to the ruled at the end of the day. Besides, despite the very high closing rate of cases by the courts, which approaches almost 100 per cent, it is increasingly based on cases being withdrawn or rejected. The withdrawal and rejection rates had doubled from 27 and seven per cent in 1988 to 54 and 15 per cent in 1997, respectively. There seems to be great pressure during the course of litigation or other problems that cause the ruled to give up their demands mid-way. In the past, the rulers had a 49 per cent chance of

winning over the ruled in first hearing administrative cases. Despite a continuing fall in that percentage to only 13 per cent in 1997, the continuing rise in the withdrawal rate by the ruled means that the latter is not gaining in the overall struggle whereas the rulers' disputed administrative acts remain mostly sustained, either legally or practically. More and more of the rulers' filed administrative acts are not given a fair trial. It seems that the courts have not been doing very well in resolving conflicts between the ruled and the rulers, especially when more than 20 per cent of all appeal cases resulted in previous decisions of the courts being not sustainable (see the Changed and Rehear columns in Table 3.5 below).

Table 3.4 Administrative Litigation First Hearing Cases, 1988-1997

	Accepted		Closed	Breakdown of Closed Cases									
				Affirmed		Recalled		Changed		Withdrawn		Others*	
	Cases	Cases	%	Cases	%	Cases	%	Cases	%	Cases	%	Cases	%
1988	8573	8029	94	3929	49	916	11	422	5	2171	27	591	7
1989	9934	9742	98	4135	42	1364	14	587	6	2966	30	690	7
1990	13006	12040	93	4337	36	2012	17	398	3	4346	36	947	8
1991	25667	25202	98	7969	32	4762	19	592	2	9317	37	2562	10
1992	27125	27116	100	7628	28	5780	21	480	2	10261	38	2967	11
1993	27911	27958	100	6587	24	5270	19	430	2	11550	41	4121	15
1994	35083	34567	99	7128	21	6547	19	369	1	15317	44	5206	15
1995	52596	51370	98	8903	17	7733	15	395	1	25990	51	8349	16
1996	79966	79537	99	11549	15	11831	15	1214	2	42915	54	12028	15
1997	90557	88542	98	11230	13	12279	14	717	1	(64316	73)**	

* Others include cases rejected.

** Withdrawn, rejected, referred and other cases combined.

Source: Law Yearbook of China, 1989-1998 (% added)

Table 3.5 Administrative Litigation Second Hearing Cases, 1988-1997

	Accepted		Closed		Breakdown of Closed Cases									
	Cases	Cases	%	Affirmed		Changed		Rehear		Withdrawn		Others*		
				Cases	%	Cases	%	Cases	%	Cases	%	Cases	%	
1988	2356	2218	94	1573	71							645	29	
1989	2908	2888	99	1875	65	227	8	229	8	127	4	430	15	
1990	3431	3325	97	2192	66	662	20	258	8	102	3	111	3	
1991	6930	6708	97	4381	65	605	9	543	8	224	3	955	14	
1992	8334	8273	99	5333	64	1332	16	687	8	397	5	524	6	
1993	7426	7584	100	4859	64	1343	18	555	7	370	5	457	6	
1994	7699	7672	100	4974	65	1196	16	573	7	429	6	500	7	
1995	9694	9536	98	6086	64	1408	15	676	7	658	7	708	7	
1996	11454	11365	99	7206	63	1951	17	827	7	702	6	679	6	
1997	12754	12684	99	7603	60	2105	17	937	7	1143	9	896	7	

* Others include cases cancelled.

Source: Law Yearbook of China, 1989-1998 (% added)

To sum up, the PRC's administrative litigation does show real growth and development during its eight years of implementation in terms of both the number and scope of administrative cases accepted. More and more members of the ruled are accepting and resorting to the use of administrative litigation to complain against illegal administrative acts of the rulers. The PRC's administrative litigation is playing a part in remaking the Chinese ruled-rulers relationship. However, there are still constraints and problems, which have restricted and prevented the PRC's administrative litigation from doing what it could and should. Some of the major problems are examined below.

2. Implementation Problems of the PRC's Administrative Litigation

Problems with implementation of the PRC's administrative litigation are wide ranging, and concern the ruled, the rulers, the judiciary setup, as well as the larger political system.⁴ In respect of the ruled, many of them suffer from a "three-don't" syndrome, i.e. don't know how to sue, don't want to sue, and don't dare to sue.⁵ As for the first syndrome, poor promotion after the setting up of the PRC's administrative litigation by the rulers is the main reason for the ruled not knowing how to sue.⁶ As for the second, the Chinese cultural tradition of avoiding the rulers and the judiciary, as part of the rulers, are one of the major factors for the ruled not wanting to sue.⁷ The adages that "citizens don't fight against the government" (民不與官鬥) and "don't enter lawcourts when alive; don't enter hell when dead" (生不入官門, 死不入地獄) are good reflections of that tradition. Other factors include high costs, great risk and the low success rate of litigation. As for the last syndrome, fear of revenge and retaliatory actions by concerned administrative agents is one of the reasons for the ruled not daring to sue.⁸ The motto of "winning once but losing for life" (贏了一案子, 輸了一輩子) clearly reveals the hard fact that litigation would only make life more difficult for the ruled because they are still subject to the rule of the same rulers after litigation.⁹ It is not uncommon for members of the ruled

to prepare to move out of their business and place of residence for the rest of their lives when they do consider suing the government in administrative litigation.¹⁰

On the other hand, the rulers have a “three-averse” syndrome, i.e. averse to being sued, averse to appearing in court, and averse to losing in litigation.¹¹ To avoid being sued, the rulers have many countermeasures against administrative litigation, like turning specific administrative acts into abstract administrative acts by means of administrative legislation, exerting pressure on the ruled to refrain from taking litigation, and altering their disputed administrative acts before litigation takes place.¹² To avoid appearing in court, the rulers will request the courts not to accept cases, exert pressure on the courts to reject cases, collaborate with the courts to mediate with the plaintiff to withdraw the case, or simply disregard a summons by the courts.¹³ To avoid losing in litigation, the rulers may refuse to produce evidence and supporting documents necessary for court hearings, interfere with the courts’ decisions through administrative measures, or even arrest the plaintiffs in open court in defiance of the ongoing litigations.¹⁴ Even if the rulers did lose in a case, they might simply refuse to accept the ruling, decline to pay compensations and litigation costs, and continue with their original administrative acts.¹⁵

Besides the ruled and rulers, the Chinese judiciary also has problems of its own which inhibit the development of administrative litigation in the mainland. The first problem lies in its dependence on the administration.¹⁶ The Chinese judiciary does not have its own budget but is controlled by the administration in its financial provisions. Besides, the courts are also subject to the rule of the local government in many other administrative affairs. In a word, the judiciary has a close relationship with and is very much dependent on the administration. As such, it is highly unrealistic and difficult to ask the courts to review the acts of the administration in a discreet manner. Not many courts have taken up administrative litigation very seriously after its establishment because the job is so difficult and would upset their relationship with the administration.¹⁷ For those who have, they are soon frustrated by delay in reimbursement of funds and non-cooperation of all sorts by the administration. This problem is worsened by the present system in which, when a particular administrative agent is being sued, it is for the court of the same level and location as the administrative agent to hear the case in question. Hence, it is not uncommon to see a high-ranking administrative official in the defendant's panel paying little respect to or even criticising the presiding judge, who can do nothing because of his lower rank.¹⁸

Besides the lack of independence, the judiciary also suffers from various kinds of deficiencies, particularly among the lower level courts. Out of the over 3,200 administrative litigation courts established in the mainland since 1989, not all of them manage to have sufficient staff to form a collegiate panel of three for the hearing of administrative litigation cases. For those who do, their administrative litigation staff team is not stable because either the judges are frequently on loan to other courts – since administrative litigation cases are infrequent – or the judges themselves request a permanent transfer-out because the job is difficult and the small number of administrative litigation cases leads to proportional cuts in their material rewards.¹⁹ In addition, among the country's over 12,000 administrative litigation judges, many are not well enough trained to handle administrative cases, e.g. they have little training on the handling of administrative litigation, little experience with administrative work, and little knowledge about related administrative legislation.²⁰ Finally, administrative litigation work is made difficult because case precedence is not employed in the Chinese judicial system, which means that each and every case has to be judged by its own circumstances.²¹ In summary, the Chinese judiciary was not originally designed for administrative litigation, is not structurally fit for doing so, and is not operationally well enough prepared to meet the challenges of administrative litigation.

Finally, the larger political system also plays a part in jeopardising the implementation of the PRC's administrative litigation. The Chinese judiciary is not only controlled by the administration, as mentioned, but is also directed by the Party in its personnel arrangements and supervised by the people's congresses in its work. Hence, the administrative litigation judges are subject to pressure from both the Party and the people's congresses. Although the PRC's constitution provides for independent exercise of judicial power by the courts, it does not preclude the leading and supervisory role of the Party and people's congresses on the judiciary. It is not uncommon to find Party officials and deputies of people's congresses interfering with litigation proceedings and influencing the judges' decisions due to political or personal reasons.²² Due to the Party's close involvement in the state's administration, political interference in the PRC's administrative litigation is frequent and serious.

To sum up, when the PRC's administrative litigation was promulgated in 1989, people could easily understand the potential value of the new institution in principle, but few could anticipate its implementation problems in practice. In fact, practically the entire cultural and structural macro-environment is unconducive to the growth and development of administrative litigation in the mainland. When put into practice, complex and wide-ranging problems emerge. To varying extents, all involved parties,

including the ruled, the rulers, the judiciary, and other actors outside the administrative litigation institution, were found to be insufficiently prepared to help implement the PRC's administrative litigation.

B. Second Diagnosis of the Administrative Litigation Law

Administrative litigation starts off with the ruled complaining to the court and acquiring the status of a plaintiff by meeting the legally required qualifications, and is then followed by the ruler presenting evidence as defendant to support the administrative act in question. The PRC's Administrative Litigation Law contains provisions on both the issues of administrative litigation participants and evidence in its Chapters four and five, respectively. These two chapters will be examined in this second diagnosis of the Law, in the hope of providing a better background for discussion of the ruled and rulers samples' affective orientation later in this chapter.

Participants in administrative litigation are carefully and clearly defined in Chapter four of the Law so as to prevent unqualified members of the ruled becoming the plaintiffs, to avoid unnecessary members of the rulers becoming the defendants, and to minimise undeserved efforts of the courts in repeating litigations based on the

same or similar administrative acts. The chapter's first four articles define the four kinds of participants in administrative litigation, i.e. plaintiffs, defendants, joint participants, and third parties, respectively, whereas the remaining three lay down the rules for legal agents and lawyers to follow when acting as representatives of the participants in administrative litigation.

In brief, there can be only three kinds of plaintiffs – citizens, legal persons and “other organisations” (Article 24). Citizens refer to nationals of the PRC and non-nationals pursuing administrative litigation in the PRC's territory. Legal persons include economic enterprises, public utilities, social organisations, administrative agents, etc. They form the second large group of plaintiffs but they must possess the legal status of an independent entity with full civil rights and responsibilities before they are qualified to initiate litigation. Hence, unrecognised and non-sanctioned social and political organisations are all denied the right to sue the rulers. “Other organisations” are those not possessing the status of legal persons but approved by concerned state authorities to engage in certain activities, like partnership organisations, business associates and subsidiaries of legal persons, local subsidiaries of banking and insurance institutes, and many rural and township enterprises. In a word, organised bodies other than individual citizens are given the

chance to sue the rulers only when they are recognised and controlled by the latter.

Administrative litigation plaintiffs can only be of the above three kinds, but not all three can become plaintiffs. Before they can fight for their substantive rights and interests in open courts, fights which may or may not succeed, they must first pass through a procedural validation, because they have to “bring administrative proceedings in accordance with this Law” (Article 24). For example, they must be able to show *sufficient factual support* for a *specific claim* that his *lawful right or interest* has been infringed upon by a *specific administrative act* of a *definite administrative agent* (Article 41). Failing to do so, the court will not accept his case. Requirements like this not only prevent abuse of the right to litigate by the ruled but also protect the exercise of administrative authority by the rulers. In short, not everyone can sue the government under the PRC’s administrative litigation: he must be within the approved categories and fulfill the litigation requirements before he can acquire the status and exercise the rights of a plaintiff.

In more specific terms, the defendant in administrative litigation is limited to the administrative agent (not the individual official) that is directly responsible for the administrative act under question (Article 25). Normally, it is the government

department (not the individual official) that performed the act. If two or more departments performed the act, all departments responsible shall become co-defendants. But if only one department finally authorised the act by signature or others, then only that department shall be the defendant, despite other departments' involvement. If administrative reconsideration has been conducted, the reconsidering authority will become the defendant only if it modifies the original administrative act. The original department will still be the defendant if the reconsidering authority upholds the act or does not give a decision.²³ After all, only administrative agents can be defendants in administrative litigation; this includes legally authorised organisations but not entrusted ones where responsibility still lies with the entrusting administrative agents. Non-administrative organisations can only be third parties if they are liable to compensation for administrative acts jointly performed with administrative agents.²⁴ In case administrative authorities are closed, those that continue with the functions shall be the defendants. In short, the Law has specified no less and no more than those necessarily accountable administrative agents to be answerable in administrative litigation as the defendants under all foreseeable situations.

Joint participants and third parties are allowed to join in the same proceeding if

they are involved in the same or similar administrative act under question or if they have legally established interests in the act (Articles 26 and 27). Joint proceedings can avoid the waste of time and effort by the courts as well as other participants in repeating proceedings based on the same or similar administrative acts, and can also avoid the making of conflicting decisions by the courts concerning the same or similar administrative acts.

In case the litigants do not have the competence to perform procedural acts, like dependents and mental patients, they can be represented by their legal agents such as parents, adult family members, or lawful guardians (Article 28). By written authorisation, participants in litigation can also assign a maximum of two legal representatives, e.g. lawyers, social organisations, close relatives, working colleagues or other citizens approved by the courts, to proceed on their behalf (Article 29). This can ensure that no parties in the course of litigation will be jeopardised because of certain limitations, like communication problems, physical inconvenience, or lack of relevant legal knowledge. By approval of the courts, both the plaintiffs and the defendants, as well as their representatives, can consult related case materials, except confidential materials like those involving state secrets or individual privacy, which can only be consulted by their lawyers. The representing

lawyers can also investigate concerned parties and collect evidence to support their claims, but they must do so in accordance with provisions contained in chapter 5 of the Law on evidence, which will be discussed below (Article 30).

Chapter five of the Law contains six articles (Articles 31-36) which expound the rules of evidence in administrative litigation, including the type of evidence, the burden of proof, the collection, verification, and preservation of evidence. To start with, the Law lists seven types of evidence, including documentary evidence, real evidence, audio-visual materials, testimony, statements, expert evaluations, and inspection records, which must be verified in open courts as being true, relevant and lawful before they are accepted as a basis for establishing a case (Article 31). As for the burden of proof in administrative litigation, the same principle applies as in other kinds of proceedings, i.e. it rests with those parties who have a claim to make or a fact to establish. The only difference in administrative litigation concerns the burden of proof for the questioned administrative acts (not including inactions). Because the latter are, by nature, claims and facts made and established by the administrative agents concerned, the Law specifically requires the defending administrative agents to bear the burden of proof in respect of the factual and legal evidence for the administrative acts in question (Article 32). This in fact tallies with the actual reality

that evidence for those administrative acts are mostly unavailable to the complaining members of the ruled, but are controlled by the administrative agents coming under complaint. In case the administrative agents fail to prove their administrative acts, the courts shall render a judgment to revoke those acts.²⁵

In addition, the Law specifies that the defending administrative agents and their lawyers cannot collect further evidence from the plaintiffs or witnesses during the course of proceedings (Article 33).²⁶ This is because the evidence that the agents are required to provide about the questioned administrative acts should already be established and made available at the time of the acts. This serves the aim of supervising the administrative authorities' exercise of authority (Article 1) and can help promote rule according to the laws. Besides the above burden of proof, the defending administrative agents are not obliged to provide other evidence unless they want to disprove the claims of the plaintiffs. On the other hand, the plaintiffs in administrative litigation also need to submit supporting evidence if they have claims to make, e.g. claims for compensations and complaints against inactions of administrative agents, or if they want to refute the claims of the defendants.

As for the courts, they have the right to request the defendants and the plaintiffs

to supply supplementary evidence if those provided are insufficient. The courts can take the initiative to collect evidence when the two parties are unable to provide evidence, when there are contradictions in one or both parties' evidence, or when the evidence cannot be brought to the courts (Articles 34 and 35). When the needs arise, the courts can also take measures to preserve evidence that might be lost or destroyed or difficult to obtain later, upon application by the case participants or by its own initiative (Article 36).

To reiterate, not all members of the Chinese ruling group can be sued under the PRC's administrative litigation and not every act of the rulers can be sued (see the first diagnosis). In addition, not everyone can sue the rulers and it is not at all easy to do so (see above). Although the Law shifts the burden of proof from the ruled (plaintiffs) to the rulers (defendants) in proving the legality of the latter's administrative acts, it does not mean the ruled can win their cases easily. The implementation records of the PRC's administrative litigation over the past eight years show an arduous progress plagued with problems of all sorts. It has indeed gone through a difficult and zigzag path of development, and so far has not been able to do what it could and should. Under these circumstances, how do the ruled and the rulers feel about the new institution? Do they in fact accept and support it?

Let us find the answers by taking a look at the ruled and rulers samples' affective orientation towards the PRC's administrative litigation.

C. Affective Orientation of the Surveyed Individual Household Proprietors

Six questions were asked of the 738 interviewed proprietors to measure how well they accepted administrative litigation in the PRC and to ascertain the affective bearing of their administrative litigation culture (see Table 3.7 for the questions). To avoid the respondents overstating their actual affective orientation and to ensure accurate responses, the six questions are posed as negative expressions so that the respondents had to disagree with the statements in the questions if they did have positive affective orientation towards administrative litigation. Their answers are presented and discussed below in similar way as discussion on the cognitive orientation in the last chapter.

1. Overall Level and Pattern of the Proprietors' Affective Orientation

Based on the responses to the first three affective orientation questions, it was found that as many as two-thirds of the interviewed proprietors manifested a positive

feeling towards the newly established administrative litigation, as opposed to one-tenth who indicated a negative feeling. The rest, about one quarter, were either neutral or uncertain. Starting with the first question, 71.1 per cent of the proprietors accepted administrative litigation as an appropriate channel for resolving conflicts between the ruled and rulers (see Table 3.6 below). In particular, 23.3 per cent “totally agreed” with the use of that method (see Appendix 5). Only 12.3 per cent objected to its use. In response to the second question, up to 64.4 per cent regarded administrative litigation as suitable to China. Only 8.3 per cent regarded it as alien and not suitable. When asked the third question, more than two-thirds of the proprietors (69.8 per cent) stated that they supported establishing administrative litigation in the country. Only one-tenth voted against it. In view of the above, it is clear that a majority of the ruled sample do accept and endorse administrative litigation as appropriate for both the people and the country, whether in principle, in nature, or by vote. A hostile affective environment is not obvious and perhaps exists only among a small minority of the ruled sample.

Table 3.6 Responses of the Proprietors to the Six Affective Orientation Questions

			A	N	D	?	s.d.
6	Citizens should not sue the government, other methods should be used to solve the problem.	q	90	96	521	26	1.00
		%	12.3	13.1	71.1	3.5	
7	It is a Western institution, not suitable for our country.	q	60	71	468	127	0.90
		%	8.3	9.8	64.4	17.5	
8	I do not support establishing the institution.	q	75	86	508	59	0.95
		%	10.3	11.8	69.8	8.1	
9	Government bureaus do not carry out illegal action.	q	39	60	532	96	0.89
		%	5.4	8.3	73.1	13.2	
10	I don't care about implementation of the institution.	q	101	146	396	78	0.91
		%	14.0	20.3	54.9	10.8	
11	I know very little about the present institution.	q	486	85	63	97	0.81
		%	66.5	11.6	8.6	13.3	

A = Totally agree and agree;

N = Neutral;

D = Totally disagree and disagree;

? = Don't know;

s.d. = Standard deviation;

q = Frequency.

"Don't know" and "missing value" not included in the calculation of standard deviation.

In addition, many of the respondents shared sympathy with the need for administrative litigation; in answering the fourth question, as many as 73.1 per cent accused the rulers of illegal actions (see Table 3.6 above). In particular, 26.5 per cent felt absolutely certain on that accusation (see Appendix 5). Only 5.4 per cent felt confident that the rulers were acting legally and hence, administrative litigation was probably not required. However, the sample's concern for the institution in practice was not as high as their acceptance of it in nature and support of it in principle. When asked the fifth question, relatively less of them (54.9 per cent) showed continuous enthusiasm about its implementation. It may be true that the establishment of administrative litigation is everyone's business and all can

comment on its appropriateness, but the implementation of the institution becomes someone else's business and one has little concern for it unless he has to use it. At the end of the day, no more than one-tenth of the proprietors replied to the last question, saying they had made effort to get acquainted with the new institution. Up to 66.5 per cent admitted that they knew very little about it. Undeniably, their support and concern were not strong enough to push them to actually attend to the institution and make the effort to get acquainted with it.

The above tends to suggest that the ruled perceive the PRC's administrative litigation not as an end in itself but largely a means to counteract illegal actions of the rulers. The most immediate reason for the ruled to endorse and support the establishment and use of the PRC's administrative litigation is because of the serious and endemic illegal acts among the rulers, which threaten not only their own interests but those of the country in general. To the ruled, administrative litigation as a procedural remedy does not exist by itself in the abstract but is valued for the purpose it serves. But then, although they give their consent to and have clear support of the institution, their affective orientation stays mostly in the moral and rational domains, not personal. Personal concern arises only when the use of the institution becomes a personal issue.

Variance in the responses of the interviewed proprietors was low, with standard deviations from only 0.81 to 1.00. The overall affective orientation scores of the proprietors sample showed that more than half of them had a positive affective orientation towards the institution, with slightly over 10 per cent being neutral, another 10 per cent not sure, and less than 20 per cent feeling negatively about the institution (see Table 3.7 below). To sum up, the affective orientation of the ruled sample towards the PRC’s administrative litigation was largely positive. The majority did accept and support the new institution in principle, and most, basically, agree there was a real need for it. But their enthusiasm was not as strong in respect of the institution in practice and clearly not strong enough to motivate them to expend the effort to learn about it. In a word, their affective orientation was largely positive but not particularly intense, and was mostly in the moral domain rather than being a personal concern.

Table 3.7 Overall Affective Orientation Scores of the Proprietors

		A	N	D	?
Overall Affective Orientation	tq	851	544	2488	483
	aq	141.8	90.7	414.7	80.5
	%	19.5	12.5	56.9	11.1

A = Totally agree and agree;
? = Don’t know;

N = Neutral;
tq = Total Frequency;

D = Totally disagree and disagree;
aq = Average Frequency.

2. Internal Relationship of the Proprietors' Affective Orientation

Significant correlation was found in the interviewed proprietors' answers to five of the six affective orientation questions, suggesting that the internal relationship of the proprietors' affective orientation was rather close and extensive. For the first three affective orientation questions, the proprietors' answers were all mutually correlated with a Spearman's rho correlation coefficient of above 0.20 (see Table 3.8 below), suggesting that those proprietors who accepted administrative litigation as an appropriate redress mechanism would also tend to regard it as suitable to the country and support its establishment. Moreover, their answers to the first three affective orientation questions were also mutually correlated with their answers to the fourth and fifth questions, although the rho coefficient might not reach 0.20. Those proprietors who accused the government of illegal actions also tended to accept and support administrative litigation, as well as care for its implementation, though to a lesser extent (rho coefficient being only 0.15). In particular, answers to the third question had the strongest correlation with answers to the other four questions, with rho coefficients all over 0.20, suggesting that support for the institution was most strongly tied with other aspects of the proprietors' affective orientation.

Table 3.8 Spearman's rho Correlation Coefficients for the Internal Relationship of the Proprietors' Affective Orientation

Q	06	07	08	09	10	11
06		.21	.27	.19	.15	
07	.21		.24	.17	.20	
08	.27	.24		.23	.24	
09	.19	.17	.23		.15	
10	.15	.20	.24	.15		.17
11					.17	

Row highest in shade, average rho coefficient = 0.15.

Significance level at .05, 2-tailed.

The last affective orientation question on enthusiasm to get acquainted with the institution was the only question whose answers were not associated with answers to the other affective orientation questions, except for the fifth one. The internal relationship for answers to this last question was the lowest. Only those proprietors who cared about implementation of the institution would also care to learn about it. This reconfirms the above observation that rational support and moral consent do not necessarily lead to actual acquaintance. Affective orientation of the ruled sample towards the PRC's administrative litigation might be high on the level of principle, but it is still quite low on the level of practice. In the end, few of them would reject the institution but not many would regard it as an immediate concern. To conclude, the sampled ruled have a positive and consistent affective bearing in their administrative litigation culture, although their affective appreciation of the

institution is not particularly strong.

3. External Relationship of the Proprietors' Affective Orientation

The external relationship of the proprietors' affective orientation, calculated by the phi and Spearman's rho correlation measures, is summarised in Table 3.9 below.

Table 3.9 External Relationship of the Proprietors' Affective Orientation

Orientation	Relationship
Cognitive	Very Strong
Jurisdictional	Small
Evaluational	Slight
Appraisal	Fairly Strong
Expectational	Small

Among all other orientations, the proprietors' affective orientation was most closely correlated with their cognitive orientation. In particular, their answers to all six affective orientation questions correlated quite strongly with their answers to cognitive orientation questions 1, 2, 4, and 5, with fairly high phi correlation coefficients of 0.13 to 0.34 (see Table 3.10 below). The only exception was cognitive orientation question 3 about experience with suing the government, where the answers were not correlated with any of the affective orientation answers. This

suggests that the ruled sample’s affective orientation towards the PRC’s administrative litigation is tied with their cognitive orientation towards the same. A general and positive basic cognition of the institution and the Law, not necessarily actual experience with litigation proceedings, is associated with and can help develop a positive and supporting affective orientation towards the institution.

Table 3.10 Correlation Coefficients for the External Relationship of the Proprietors’ Affective Orientation

	Cognitive Orientation					Jurisdictional Orientation								Evaluational Orientation								Appraisal Orientation								Expectational Orientation				
Q	1	2	3	4	5	12	13	14	15	16	17	18	19	20	21	22	23	24	25	26	27	28	29	30	31	32	33	34	35	36	37			
6	22	24			13														12	09	09			08										
7	20	30		24	14			09					10						10	14	18	17	18	22		15				08				
8	14	17		18	13								13	08	08	10						07		08			10	08	10					
9	16	16		15				10			09														09									
10	14	18		19	15								11	10	11	08	08		09	10	11	08	08		08	08								
11		14		30	34	11	12	10	09		08	07							13	15	12	11	11	11	12				10		11			

Phi correlation for Q1-5, rho for others, phi & rho coefficients at 2 decimal points.
Significance level at .05, 2-tailed, negative in shade.

Fairly strong correlation was also found with the appraisal orientation. The proprietors’ answers to affective orientation questions 7, 10 and 11 were quite strongly correlated with their answers to the appraisal orientation questions, with significant Spearman’s rho correlation coefficients of 0.10 to 0.22, 0.08 to 0.11, and 0.11 to 0.15, respectively (see Table 3.10 above). Proprietors who accepted

administrative litigation as suitable for the country, cared for its implementation and cared to get acquainted with the institution, also tended to have a favourable appraisal of the institution. But the same appraisal was not necessarily shared by those who accused the government of illegal actions and supported the use and establishment of administrative litigation in the country.

The relationship between the proprietors' affective and evaluational orientations was slight. Only their answers to affective orientation questions 8 and 10 were significantly correlated with their evaluational orientation answers and such relationships were not very strong (see Table 3.10 above). The relationship between the two orientations was negative because those affective orientation questions were negatively expressed while the evaluational orientation questions were positively phrased. The findings suggest that members of the ruled, who support establishing the institution and care about its implementation, are also likely to have an affirmative evaluation of the institution's consequences, like protecting citizens' legal rights, promoting the rule of law and preventing abuse of power by government officials. On the contrary, those who endorse administrative litigation as an appropriate redress mechanism and accuse the rulers of illegal actions may not share the same positive evaluation of the institution.

Correlations of the proprietors' affective orientation with their jurisdictional and expectational orientations were not statistically significant. Very little significant Spearman's rho correlation coefficients were recorded between answers of the affective and the other two orientations.

Through cross-tabulation, the answers of those sub-groups of proprietors who held positive affective orientation in each of the six affective orientation questions (i.e. sub-groups in the disagree column of Table 3.6), were compared with the overall results of the entire sample (details of the extensive cross-tabulation results are not displayed due to space constraints). It was found that in each and every affective orientation question, those who held positive affective orientation invariably had an overall better administrative litigation culture, i.e. higher cognitive orientation, more positive affective orientation, stronger jurisdictional orientation, more favourable evaluational orientation, more positive appraisal orientation, and more optimistic expectational orientation. This suggests that positive affective orientation is, indeed, contributive to a better overall administrative litigation culture for the ruled. Efforts to increase the acceptance and support of administrative litigation among the ruled may also help to establish a better overall administrative litigation culture.

To sum up, affective orientation is not very strongly related with the other orientations in the sampled ruled’s overall administrative litigation culture, but a positive affective orientation is conducive to a better administrative litigation culture among members of the ruled.

4. Affective Orientation among Different Sub-Groups of Proprietors

Relationship between the proprietors’ affective orientation and personal particulars based on cross-tabulation analysis is summarised in Table 3.11 below (details of the extensive cross-tabulation results are not displayed due to space constraints).

Table 3.11 Relationship between the Proprietors’ Affective Orientation and Personal Particulars

Relationship with Affective Orientation	Personal Particulars
Insignificant	Gender Political Status Residency Working District
Slightly Significant	Working Years Income
Significant	Age Kind of Business Education Level

Sub-Groups with Insignificant Relationship

Affective orientation of the proprietors was found to have an insignificant relationship with their gender, political status, residency, and working districts. No major difference was found in the cross-tabulation results of various sub-groups under these four personal particulars. Proprietors of either sex, belonging or not to political groups, with or without Beijing local residency, and working in no matter which districts, all displayed a similar level and pattern of affective orientation, i.e. the majority were supportive, sympathetic, and positive towards the institution, by more or less the same proportion.

Sub-Groups with Slightly Significant Relationship

Under the general norm of positive feelings, seniority in terms of working years in the profession seemed to have a negative relationship with the proprietors' affective orientation towards the institution, especially for those with over ten years of work. For this group, they appeared to be the most conservative and least ready to accept administrative litigation. They had the highest percentage who regarded administrative litigation as an alien institution, who did not support its establishment, and who denied illegal actions by the government, plus the second highest percentage who showed little care about implementation of the institution and who

proposed the use of other methods instead. In view of the fact that this group tended to be the older age group (see appendix 7), age – which was found to be significantly related with the proprietors' affective orientation – might be an important intervening factor. This could be demonstrated by their having the highest percentage who had acquaintance with the institution, which was consistent with the close relation between age and cognitive orientation discussed in the last chapter.

At the other extreme, those newcomers with less than one year in business were relatively more inclined to accept the institution. They had the highest percentage who were prepared to use such a legal process and were convinced that it suited China, plus the second highest percentage who claimed support of its establishment. Yet, they were the group least acquainted with the institution. Again, age could have been an important intervening factor. For those proprietors between these two extremes, they showed a generally warm affective feeling towards the institution, rendering support and care to it.

Similar to the above personal particular, income also appeared to have a negative relationship with the proprietors' affective orientation towards the institution, but mainly for the highest income group, i.e. such a negative effect was

not proportional to rising income. Proprietors with a monthly income of over RMB4,000 appeared to be least attracted to the institution. They had the highest percentage who preferred other methods to administrative litigation, who did not support its establishment, and who denied illegal action with the government, plus the second highest percentage who regarded administrative litigation as an alien institution and admitted low acquaintance with it. But they had the highest percentage who claimed to care about its implementation. Those of the lower income groups, especially those earning from RMB301 to 1,500 per month, had the best overall affective orientation towards the institution, though were still not well acquainted with it.

Sub-Groups with Significant Relationship

Age of the proprietors had a negative and almost proportional relationship with their affective orientation, i.e. the higher the age, the less positive the proprietors in their affective orientation towards administrative litigation. The highest age group of over 60 had the highest percentage who regarded administrative litigation as an alien institution, who did not supporting its establishment, who preferred other methods to litigation, and who had little acquaintance with the institution, plus the second highest percentage who denied illegal action with the government and had little care

about the implementation of administrative litigation. This was in line with the above discussion on working years. Years of age and years of work were both negatively related with affective orientation, but such a negative pattern was much clearer for age, suggesting that age was a much stronger factor in affecting the proprietors' affective orientation when compared with working years. Spearman's rho correlation coefficients for this personal particular also affirmed a negative relationship with the answers to four of the affective orientation questions, with coefficients from -0.10 to -0.17 (see Table 3.12 below).

Table 3.12 Correlation Coefficients for the Proprietors' Affective Orientation and Personal Particulars

Affective Orientation Question	Gender	Age	Political Status	Working Years	Kind of Business	Residency	Working District	Income	Education Level
6		.17	.12						.11
7		.17	.16		.13	.17			
8		.11							
9		.10		.08		.15	.12		.09
10	.13		.11						
11									

Phi for gender & residency, Spearman's rho for age, working years, income & education level.
Cramer's V for political status, kind of business & working district.
Significance level at .05, 2-tailed, negative in shade.

On the contrary, the younger the proprietors, the more enthusiasm they had for

administrative litigation. The youngest age group of between 18 to 30 had the highest percentage who were prepared to resort to such legal process and supportive of its establishment, who cared for its implementation and accused the government of illegal actions. In addition, they tended to have concurring responses of positive feelings towards administrative litigation, and hence, very low responses of negative feelings. Such a clear tendency in answers was not found among the other age groups.

Despite the general norm of positive feelings, proprietors in different kinds of businesses indeed felt differently about administrative litigation. Proprietors in the repairing business were least enchanted with the institution. They stood out from the other groups significantly with negative feelings in all six affective orientation aspects. Age and education level could have been important intervening factors here because proprietors in the repairing business tended to be older and less educated. On the other hand, proprietors in the servicing business had the most positive overall affective orientation. Proprietors in the catering business were most likely to have neutral comments whereas those in the retailing business were most likely to give no comments. The Cramer's V correlation measure indicated that the kind of business was positively related by a coefficient of 0.13 with the answers to affective

orientation question 7, about the suitability of administrative litigation to China (see Table 3.12 above).

Last but not the least, the proprietors' education level was positively correlated with their affective orientation, i.e. the higher their education level, the more positive their feelings became. Specifically, proprietors with only primary education had the highest percentage who regarded administrative litigation as an alien institution, who did not support its establishment, who had little acquaintance with it, who denied illegal action with the government, and who preferred other methods to solve the problem, plus the second highest percentage who declined support of and care for the institution. Proprietors with post-secondary, undergraduate or further education held the opposite view, showing much greater sympathy with the institution. The Spearman's rho correlation coefficients showed that education level was related with the answers to affective orientation question 6 by 0.11 and 9 by 0.09 (see Table 3.12 above).

In summary, the two personal particulars of age and education level had the strongest influence on the ruled sample's affective orientation, though in opposite ways. Those younger and better-educated proprietors were more likely to have better

affective feelings for administrative litigation. The veteran and less educated group had the least positive feeling towards the institution.

D. Affective Orientation of the Surveyed Government Officials

The same six affective orientation questions were asked of the 152 successfully interviewed government officials to measure how well this rulers sample accepted administrative litigation in the PRC and to identify the affective bearing of their administrative litigation culture. Their responses are presented and discussed below in the same way that the responses of their ruled counterparts are presented above, with the addition of a comparison between the two.

1. Overall Level and Pattern of the Officials' Affective Orientation

Most of the interviewed government officials responded positively to all six affective orientation questions, and an even greater percentage of them than their proprietor counterparts indicated acceptance and support of, sympathy and acquaintance with the PRC's administrative litigation. Despite the risk of being sued, still 84.8 per cent of the officials agreed in principle with the use of administrative

litigation as a redress mechanism for the ruled against the rulers, 13.7 per cent more than their proprietor counterparts (see Table 3.13 below). About 90 per cent of them accepted the institution in nature as being suitable for the country and supported its establishment in spirit (25.7 per cent and 21.6 per cent more than the proprietors, respectively). As high as 92.1 per cent of the officials indicated sympathy with the need for administrative litigation when admitting that government bureaus did perform illegal acts (19 per cent more than the proprietors). A comparable 82.6 per cent of them said they cared about the implementation of administrative litigation in practice and over half of them claimed they also cared about getting acquainted with the institution (27.7 per cent and 43.0 per cent more than the proprietors, respectively). On the contrary, the percentage of officials giving negative affective orientation answers was lower than that of the proprietors, 3.3 per cent to 32.5 per cent for the former and 5.4 per cent to 66.5 per cent for the latter, and this happened in all affective orientation questions (compare Table 3.13 with 3.6). As a whole, much more of the rulers sample had a positive affective orientation, and comparatively less had a negative feeling, towards the PRC's administrative litigation when compared with the ruled sample. The standard deviations for the officials' affective orientation answers were pretty low, only 0.67 to 1.04, reflecting a strong common tendency towards a positive feeling among this group.

Table 3.13 Responses of the Officials to the Six Affective Orientation Questions

			A	N	D	?	s.d.
6	Citizens should not sue the government, other methods should be used to solve the problem.	q	11	11	129	1	0.82
		%	7.3	7.2	84.8	0.7	
7	It is a Western institution, not suitable for our country.	q	7	7	137	1	0.68
		%	4.6	4.6	90.1	0.7	
8	I do not support establishing the institution.	q	9	4	138	0	0.78
		%	6.0	2.6	91.4	0.0	
9	Government bureaus do not carry out illegal action.	q	5	2	140	5	0.67
		%	3.3	1.3	92.1	3.3	
10	I don't care about implementation of the institution.	q	9	16	124	1	0.72
		%	6.0	10.7	82.6	0.7	
11	I know very little about the present institution.	q	49	22	78	2	1.04
		%	32.5	14.6	51.6	1.3	

A = Totally agree and agree;

N = Neutral;

D = Totally disagree and disagree;

? = Don't know;

s.d. = Standard deviation;

q = Frequency.

"Don't know" and "missing value" not included in the calculation of standard deviation.

In addition, the officials' positive feelings were more affirmed and intense than the proprietors'. The former had relatively less neutral and unknown answers to the affective orientation questions than the latter. Besides, the percentage of officials who chose "totally disagree" in response to the six negatively phrased affective orientation questions ranged from 2.6 per cent to 30.9 per cent, higher than that of the proprietors' 1.9 per cent to 26.5 per cent (see Appendix 5 and 6). Not surprisingly, the overall affective orientation scores of the officials leaned favourably towards administrative litigation, with over 80 per cent showing support and less than 10 per cent claiming the opposite (see Table 3.14 below). In short, a positive affective orientation towards administrative litigation is also found among

the rulers sample, and it is even more common and intense than that of the ruled sample.

Table 3.14 Overall Affective Orientation Scores of the Officials

		A	N	D	?
Overall Affective Orientation	tq	90	62	746	10
	aq	15	10.3	124.3	1.7
	%	9.9	6.8	82.2	1.1

A = Totally agree and agree; N = Neutral; D = Totally disagree and disagree;
? = Don't know; tq = Total Frequency; aq = Average Frequency.

The above is believed to reflect the officials' genuine feelings towards the PRC's administrative litigation, given their frankness in admitting illegal acts among themselves. However, their affective orientation responses may arise from quite different considerations distinct from those of the proprietors because of the different impacts of administrative litigation on the two parties. Members of the ruled value the PRC's administrative litigation for the purposes it serves and hence readily support the use of the institution (response with the second highest percentage). Members of the rulers may not feel the same but recognise the institution largely as a state program and an official policy that they have to accept and comply with. As a matter of fact, establishment of the institution was endorsed by the second highest percentage of the rulers sample, but the use of the institution

was supported by fewer members of the rulers. Furthermore, existence of the many operational problems mentioned above means a very constrained administrative litigation in practice, hence the threat of the institution to the officials is largely reduced, which helps them to endorse the institution in principle with lesser resistance.

On the contrary, members of the ruled mostly do not see administrative litigation as a personal concern, hence do not care very much about its implementation nor feel the need to get acquainted with its details. But due to the pressure of administrative litigation on all members of the rulers who must now act to avoid being sued, it is understandable that the institution becomes a closer and more personal concern for this group, who would be more prepared to pay attention to its implementation and make the effort to get acquainted with its operational details. In a word, the officials displayed a high level of acceptance and support towards the PRC's administrative litigation, but such expression could be little more than an echo of the official promise whereas their care for and acquaintance with the institution is more likely to be based on personal considerations.

2. Internal Relationship of the Officials' Affective Orientation

Significant correlation was also found among the interviewed officials' answers to all the six affective orientation questions, and, in fact, the internal relationship of the officials' affective orientation was even stronger and more extensive than that of the proprietors. Strong association was found among the officials' answers to the first three affective orientation questions, with Spearman's rho coefficients of 0.34 to 0.54 (see Table 3.15 below), meaning that those members of the rulers who accepted administrative litigation as suitable for the country would also support its use and establishment. The three questions' answers were also closely related with answers to the fourth and fifth questions, though to a lesser extent, meaning that the same group of members would also admit illegal actions by the government and care about the implementation of administrative litigation. Finally, like the proprietors, those officials who cared about implementation of the institution would also tend to care about getting acquainted with the same, with a rho coefficient as high as 0.41. However, as mentioned, a causal relation may not exist among the officials' answers to these questions because there are likely to be external reasons, like their official capacity and operational problems with administrative litigation, that lead to consistency in their affective orientation answers. In fact, those who admitted illegal

actions with the government did not necessarily care about the implementation of administrative litigation or about expending the effort to get acquainted with the institution (correlation did not exist among the three in the officials' answers). In addition, there was no association between support for establishing the institution and acquaintance with it in the affective orientation of the officials. To conclude, correlation among the officials' answers to the six affective orientation questions was common and extensive, more so than the proprietors, but it was not particularly strong and was quite dependent on external factors.

Table 3.15 Spearman's rho Correlation Coefficients for the Internal Relationship of the Officials' Affective Orientation

Q	06	07	08	09	10	11
06		.42	.34	.27	.27	.21
07	.42		.54	.36	.29	.19
08	.34	.54		.41	.36	
09	.27	.36	.41			
10	.27	.29	.36			.41
11	.21	.19			.41	

Row highest in shade, average rho coefficient = 0.27.

Significance level at .05, 2-tailed.

3. External Relationship of the Officials' Affective Orientation

The external relationship of the officials' affective orientation, calculated by the

phi and Spearman's rho correlation measures, is summarised in Table 3.16 below.

Table 3.16 External Relationship of the Officials' Affective Orientation

Orientation	Relationship
Cognitive	Small
Jurisdictional	Small
Evaluational	Fairly Strong
Appraisal	Fairly Strong
Expectational	Fairly Strong

The officials' affective orientation was found to have small relationship with their cognitive and jurisdictional orientations. There was no significant findings except that the officials' answers to cognitive orientation question 2 about having heard of the administrative litigation institution were significantly related with their answers to affective orientation questions 6, 10 and 11 (see Table 3.17 below). In addition, the officials' answers to affective orientation questions 6 and 8 were quite strongly correlated with their answers to six and four jurisdictional orientation questions, respectively. This tends to suggest that an in-depth understanding of administrative litigation is not important or relevant to the officials' affective orientation towards the institution, but if they do support the use and establishment of administrative litigation in the country, they will tend to have a better and stronger jurisdictional idea about the proper grounds for litigation.

Table 3.17 Correlation Coefficients for the External Relationship of the Officials’ Affective Orientation

	Cognitive Orientation					Jurisdictional Orientation								Evaluational Orientation								Appraisal Orientation								Expectational Orientation				
Q	1	2	3	4	5	12	13	14	15	16	17	18	19	20	21	22	23	24	25	26	27	28	29	30	31	32	33	34	35	36	37			
6		34				20	25	27	25	20		18	37	36	34	35	35	25	27					26			26	24	23		17			
7			32										20	22	16	17		23	21					18			23	24						
8						17	17				16	27	17	17		16		20		21	19	20			19		30	33	26		22			
9															17							28	22		24									
10		29			34			17					33	30	25			20	24					21	17	28	23	35	28		33			
11		50			47											17			19	36	33	28	37	38	25	20		19						

Phi correlation for Q1-5, rho for others, phi & rho coefficients at 2 decimal points.

Significance level at .05, 2-tailed, negative in shade.

Compared with the other orientations, affective orientation of the officials was most strongly correlated with their evaluational orientation. But not all their answers to the affective and evaluational orientation questions were significantly correlated. The strongest correlation was found in the officials’ answers to affective orientation question 6, followed by 7, 10 and 8 in descending order. As a whole, officials who agreed with the use of administrative litigation, accepted it as suitable for China, cared about its implementation and supported its establishment, were also likely to have a higher and better evaluation of the institution, particularly in respect of protecting the citizens’ rights, expediting the government to follow the law, reducing abuse of power by officials, and improving the legitimacy of the government.

To a lesser extent, affective orientation of the officials was also fairly strongly correlated with their appraisal orientation towards the institution, but in a quite different way. Their answers to affective orientation question 11 about acquaintance with the institution, surpassed the rest this time by correlating with answers to all appraisal orientation questions, with the highest rho coefficients from 0.19 to 0.38 (see Table 3.17 above). Answers to questions 10, 8, 9, 7, and then 6 followed in descending order. Acquaintance with and caring about the institution seemed to be more closely related with the officials' appraisal orientation rather than support of, acceptance of, and readiness to use the institution. It was indeed true that appraisal was more likely to be grounded on practical understanding instead of pure feelings, especially when cognition level was higher for the rulers sample.

As for the relationship with expectational orientation, answers to affective orientation questions 6, 8 and 10 correlated significantly in ascending order with answers to all expectational orientation questions, except question 36. Officials who cared about the implementation of administrative litigation, supported its establishment, and agreed with its use, were also likely to cast a vote of confidence in the institution, especially in respect of protecting citizens' legal rights and promoting further economic reform and opening up. Answers to expectational

orientation question 36 concerning judicial independence as a condition for further development of the institution was not found to be correlated with the officials’ affective orientation answers, nor indeed cognitive and appraisal orientation answers. This might be due to their established official capacity and relationship with the judiciary in the past.

4. Affective Orientation among Different Sub-Groups of Officials

Relationship between the officials’ affective orientation and personal particulars based on cross-tabulation analysis is summarised in Table 3.18 below (details of the extensive cross-tabulation results are not displayed due to space constraints).

Table 3.18 Relationship between the Officials’ Affective Orientation and Personal Particulars

Relationship with Affective Orientation	Personal Particulars
Insignificant	Department Working District
Slightly Significant	Gender Political Status Education Level
Significant	Age Working Years Income

Sub-Groups with Insignificant Relationship

Affective orientation of the officials was found to have an insignificant relationship with their department and working district. Cross-tabulation between the two personal particulars and answers to the six affective orientation questions revealed a basically random distribution of scores. Cramer's V correlation coefficients for both personal particulars also produced nil significant results (see Table 3.19 below).

Table 3.19 Correlation Coefficients for the Officials' Affective Orientation and Personal Particulars

Affective Orientation Question	Gender	Age	Political Status	Working Years	Department	Working District	Income	Education Level
6		.17						
7		.31		.20				
8		.30		.18			.20	
9		.18						
10								
11								

Phi for gender, Spearman's rho for age, working years, income & education level.
Cramer's V for political status, department & working district.
Significance level at .05, 2-tailed, negative in shade.

Sub-Groups with Slightly Significant Relationship

Cross-tabulation of the officials' gender with their affective orientation answers

signified that male officials had less favourable affective feeling towards administrative litigation than their female colleagues. A significantly higher percentage of the male officials preferred the use of other methods, labelled administrative litigation as alien and not suitable for China, and denied both support for its establishment and care about its implementation. Female officials excelled the males in all six affective orientation measures with a fine edge, representing a marginally better affective orientation towards the institution.

Political affiliation also appears to have a negative relationship with affective orientation among the rulers sample. Officials without party membership had more positive affective orientation, surpassing the other three groups in all six affective orientation measures, whereas Communist Party officials were relatively less accommodating with the institution in most of the measures. The only democratic party official was again not included in the comparison because of his lack of representativeness.

Officials with different education levels tended to have a slightly different affective orientation towards administrative litigation, but a direct positive relationship was not obvious. Generally speaking, officials with a higher level of

education were more likely to have better feelings about the institution. Officials with only upper secondary education had a significantly higher percentage who preferred not to use the institution given other alternatives, who felt it not suitable for China, and who showed no support for its establishment. Their colleagues with higher level of education had more positive scores in all affective orientation questions except the last one about acquaintance with the institution.

Sub-Groups with Significant Relationship

Age of the officials was found to have a negative relationship with their affective orientation, though a directly proportionate relationship was not obvious. When comparing the three age groups of 18-30, 31-40 and 41-50, the last group had much lower scores than the other two younger age groups in all affective orientation questions. They had a much higher percentage who rejected the use of administrative litigation given other alternatives, who regarded it as an alien institution and not suitable for China, who gave no support for its establishment, nor cared about its implementation. However, the youngest age group only excelled in affective orientation question 7, about the suitability of the institution for China. The middle age group of 31-40, in fact, led by a slight margin in three other affective orientation questions. As such, a clear distinction in the officials' affective

orientation was only obvious for age groups below and above 40. Spearman's rho correlation coefficients also indicated that age was negatively related with the officials' answers to the first four affective orientation questions by -0.17, -0.31, -0.30, and -0.18, respectively (see Table 3.19 above).

Cross-tabulation of the officials' working years and affective orientation answers showed a significant relationship. Though inconsistent, such a relationship appeared to be quite special and complicated. New recruits with less than one year of service had the strongest opposite view, resulting in an overall poorer affective orientation towards the institution of administrative litigation. They had the highest percentage who disagreed with citizens suing the government, who referred to administrative litigation as alien and not suitable for China, who did not support its establishment, and who denied illegal actions by the government. They also tended to have a high percentage of neutral answers. Besides concluding that they had less favourable affective orientation towards the institution, it could be said that they were also the most outspoken, daring to express opposite views to existing policies. Those more mature officials with longer years of service had more homogeneous answers in line with the official policy, producing a result of better overall affective orientation towards the officially endorsed institution. This was particularly true for

officials with 7-10 years of service. They rendered 100 per cent support to three of the affective orientation questions, interestingly including the one about government committing illegal actions. However, such a tendency of homogeneous answers disappeared from the group with over 10 years of service, where opposite views re-emerged. It seemed that the veterans were less bound by the official policy and more outspoken, like the new recruits, though probably for different reasons. Spearman's rho correlation coefficients for this personal particular had significant negative scores for affective orientation questions 7 and 8 (see Table 3.19 above).

Among the three major income groups, the highest income group of RMB1001-1500 per month had the least favourable affective orientation towards administrative litigation. They had the highest percentage who objected to citizens suing the government when other options were open, who regarded administrative litigation as an alien institution not suitable for China, who did not support its establishment, and who did not care about its implementation, plus the lowest percentage who claimed acquaintance with the institution. On the contrary, the lowest income group of RMB301-600 per month had the highest percentage who supported citizens suing the government and who cared about implementation of the institution. The group in-between had the highest percentage who provided positive answers to the other

three affective orientation questions, namely regarding administrative litigation as suitable for China, supporting its establishment, and knowing about it. In view of the above, it seemed that a low income was not associated with a difference in the officials' affective orientation, but a higher income did relate with poorer feelings for the institution, perhaps because it then brought along a significant vested interest in terms of both income and seniority.

In summary, the difference between the ruled and rulers samples became more obvious in the discussion of their affective orientation. While age, kind of business and education level were important to the proprietors' affective orientation, age, working years and income were more important to the officials'. The nature and place of work were not important. Political and education backgrounds were only of slight significance. Of ultimate impact to the officials' affective orientation was, in the end, their years on the job, followed by the training they received, the politics they faced, the career development they had to consider, the vested interests they accumulated, and the number of years they served. The relationship between working years and affective orientation of the officials might be too complicated for a simple discussion. But at least, their highly unanimous positive scores on affective orientation towards administrative litigation should not be taken for granted and the

variance in their feelings about the institution should not be ignored.

E. Summary

Having discussed in the last chapter the cognitive orientation of the ruled and rulers samples, as well as the setting up of administrative litigation in the PRC and the first chapter of the PRC's Administrative Litigation Law, this chapter examines the two sample groups' affective orientation, as well as the implementation of the PRC's administrative litigation and the fourth and fifth chapters of the Law. The affective orientation of the interviewed proprietors and officials are compared and analysed above to locate the affective bearing of their administrative litigation culture in general, and to find out how well the two parties accept the PRC's administrative litigation in particular, which is the second research question of this thesis.

Implementation of the new institution and the two chapters of the Law are reviewed and examined here, not just for their own sake but for a more important purpose of supporting and complementing discussion on the affective orientation of the Chinese ruled and rulers. It has been shown that administrative litigation in the

PRC has experienced real growth and development since its establishment in 1989, but there are substantial problems as well in its course of implementation. It has also been shown how the provisions of the Law on participants and evidence help fulfill the purpose of the Law in defining a practicable but restricted administrative litigation in the country. Against this larger background, the affective orientation of the Chinese ruled and rulers towards administrative litigation is reported.

According to the survey results, most members of the ruled share strong sympathy with the need for the redress institution because there are obvious illegal actions by the rulers. As such, administrative litigation, as a legal means to correct administrative improprieties, is readily accepted and positively supported by the ruled in nature and in principle. However, it is not at all easy to sue the rulers. Many problems exist which not only impede the implementation of administrative litigation in the mainland but also deter the ruled from suing the rulers. Hence, not all members of the ruled can maintain their enthusiasm for the justified but problematic institution. Their caring about the institution's implementation in practice is not as high as their moral consent and rational endorsement of the institution. Indeed, most of them do not care to get acquainted with its operational details. As for members of the rulers, their response is even more positive and

consistent, so positive and consistent, in fact, that it may not entirely reflect their affective orientation towards the institution but may also be affected by considerations like diplomatic recapitulation of the official attitude. Be that as it may, they equally express sympathy for the need of administrative litigation because they also realise the problem of illegal administrative acts. But their acceptance and support of the institution may not be based solely upon the merits of the institution, but may be due to wanting to comply with the established policy as well. On the other hand, difficulties with the new institution in practice do not appear to be a major concern for the rulers except perhaps in reducing their resistance to the institution. In fact, members of the rulers are more concerned with implementation of the institution than the ruled because their interests are directly affected. Out of personal consideration and as a precautionary measure, they are more enthusiastic about keeping abreast of details and developments of the institution.

A close relationship is found among the six examined aspects of both samples' affective orientation, suggesting a coherent overall affective bearing in the two parties' administrative litigation culture. However, the external relationship of their affective orientation is not particularly strong, implying that their feelings towards the redress institution is quite separated from their other orientations, like

jurisdictional, evaluational and appraisal orientations. It seems that not only is both samples' affective orientation affected by outside factors, but their overall administrative litigation culture is also not very much dependent upon that affective bearing. At the end of the day, not all members in each sample group equally accept and support the institution of administrative litigation. By comparing the background of different sub-groups, it is found that education can help members of the ruled to develop a more positive and receptive feeling towards administrative litigation, but accumulation of vested interests will cause the opposite to members of the rulers.

Chapter 4 Jurisdictional Orientation and Scope of Protection under the PRC's Administrative Litigation

Jurisdictional orientation is not one of the measures used in earlier cultural studies but it is indispensable in this cultural study of administrative litigation in the PRC. The conventional approach of defining political culture in terms of cognitive, affective, and evaluational orientations is not sufficient in a legal culture study because an important aspect of the latter concerns the legal question of jurisdiction in its broad sense. In its narrow sense, jurisdiction refers to the power or enforcing boundary of a court but the word is used in a broader sense in this paper to refer to the power relationship between the plaintiff, defendant and the court. Jurisdictional orientation to administrative litigation culture is as important as jurisdiction to administrative litigation. Just as administrative litigation cannot be wholly established without defining its corresponding jurisdiction, administrative litigation culture cannot be fully ascertained without identifying its constituent jurisdictional orientation. In this chapter, the jurisdiction of the PRC's administrative litigation as provided by the PRC's Administrative Litigation Law will be identified and then the ruled and rulers samples' jurisdictional orientations will be reported and discussed, so as to understand that unique component of their administrative litigation culture.

A. Defining the Scope of Protection for the PRC's Administrative Litigation

How far does administrative litigation cover? What administrative acts should be entertained in litigation? How far can the courts adjudicate upon administrative acts under question? What should be the scope of judicial power for administrative litigation courts? How far can the ruled sue the rulers? What should be the scope of protection for the ruled? How far should the rulers be answerable for their administrative acts in judicial review? What should be the scope of review on administrative acts of the rulers? These are questions about the jurisdiction of administrative litigation in the broad sense and the opinions of concerned parties on these jurisdiction questions constitute the jurisdictional orientation of their administrative litigation culture.

The above jurisdiction questions manifest the three interrelated dimensions of administrative litigation jurisdiction and the three parties of an administrative litigation power relation – the scope of protection for the ruled, the scope of review on the rulers, and the scope of judicial power for the courts. Due to different considerations and contrasting interests, the three parties will tend to have diverse preferences on their respective dimensions, resulting in unequal jurisdictional

orientations among the three towards administrative litigation. The ruled would most likely prefer a maximum scope of protection that can protect their full range of rights and interests. The rulers would probably prefer a minimum scope of review that would affect as little as possible their daily administrative work. The courts would tend to prefer a well-defined scope of judicial power with the least ambiguity so that they can effectively adjudicate administrative cases. But these different and somehow conflicting preferences and orientations can hardly be accommodated all at the same time. The final decision rests with the decision-maker. Since the PRC's administrative litigation is provided and designed by the rulers, it is based on the will and needs of the rulers. In the end, the above jurisdiction questions are mostly very narrowly answered, resulting in a restricted scope of protection for the ruled, a tight scope of review on the rulers, a constrained scope of judicial power for the courts, and as a whole an undersized administrative litigation for the PRC.

In fact, the scope of protection (including the scope of review and scope of judicial power, same in below) had been one of the most hotly debated issues during the two years of preparation and consultation before promulgation of the PRC's administrative litigation in 1989.¹ Different suggestions on the scope of protection had been proposed and discussed.² Some argued for a wide scope of protection so as

to better protect the rights and interests of the citizens. Some insisted on a narrow one based on worry that the institution might be overused and overburdened. Some proposed using a general description to allow for flexibility whereas some suggested specific listing to provide clarity. In the end, the issue seems too difficult to be completely resolved and the resulting PRC's Administrative Litigation Law of April 4, 1989 is found to be confusing and unscientific in its definition of the scope of protection.³ Ensuing explanatory notes by the Supreme People's Court are also criticised as creating more confusion.⁴ The Chinese judiciary, academics, members of the ruled and rulers all appear to be equally confused by related stipulations of the Law and concerned explanatory notes. Consequently, a common understanding on the scope of protection is lacking.⁵

Difficulties with defining the scope of protection start with the Law.⁶ Judicial officials and law experts in the mainland commonly refer to six articles in the Law when trying to explain the scope of protection under the PRC's administrative litigation. They include Articles 2, 4 and 5 of Chapter one "General Provisions", Articles 11 and 12 of Chapter two "Scope of Acceptance of Cases", and Article 54 of Chapter seven "Hearings and Judgments". However, there are plenty of confusion and contradictions among these articles, leading to a number of queries about the

exact definition of the scope of protection.

For example, Article 2 of the Law promises that specific administrative acts are subject to judicial review under the PRC's administrative litigation, but Article 11 lists only eight types of specific administrative acts as what will be accepted in administrative litigation and Article 12 specifically exempted four kinds of specific administrative acts from judicial review. Likewise, Article 5 stipulates that the courts shall only examine the legality of specific administrative acts, but Article 54(4) empowers the courts to modify clearly unjust administrative penalties, which is clearly not a matter of legality but an issue of reasonableness. Ensuing explanatory notes by the Supreme People's Court are no better than the Law and are no more than a task-oriented piecemeal manual for troubleshooting problems arising in the course of practice, e.g. listing more specific administrative acts to be subject to judicial review or expanding the list of exemptions.⁷

In summary, there seems to be no clear and definite principle to help define a precise and accurate scope of protection for the PRC's administrative litigation but only a collection of confusing and contradictory guidelines based on political and contingent needs. The only obvious indication from the provisions of the Law and

subsequent explanatory notes is that the scope of protection is never meant to be wide but is about how narrow.

Without clear specification, judicial officials, law experts, academics, and even members of the ruled and rulers cannot agree on the scope of protection under the PRC's administrative litigation but each maintains very different interpretation based on different rationales. For example, a court may extend or constrict its scope of acceptance of cases based on its ability to adjudicate individual administrative act, interference and pressure from the administration, or simply the attitude of the court's leadership.⁸ This not only affects satisfactory protection of citizens' rights and interests but also impedes effective supervision of administrative agents' exercise of administrative authority. In the end, implementation of the PRC's administrative litigation is hampered.

B. Third Diagnosis of the Administrative Litigation Law

In fact, the above-mentioned confusion and contradictions can be reduced and the scope of protection under the PRC's administrative litigation can be ascertained if related articles of the Law are diagnosed in a holistic approach with careful

examination of the contents of the articles, honest acknowledgement of the original intentions of the Law and truthful admission of the Law's limitations. Based on such a diagnosis, it is found that the proposed use of Articles 2, 4 and 5 of the Law to help define the scope of protection is wrong and misleading. Although they have implications for the scope of protection, they are no more than "general provisions" that lay down the principles for the conduct of administrative litigation. They do not serve to define the scope of protection and have not done so. After all, it is Articles 11 and 12 that define the width of protection and Article 54 that defines the depth.

Article 11 of the Law delimits the width of protection by citing eight types of specific administrative acts as what will be accepted in administrative litigation. They include five types of specific administrative acts, i.e. administrative penalties, coercive administrative measures, infringement of operational autonomy, unlawful requirement for performance of obligations, and infringement on other personal or property rights, plus three types of specific administrative in-actions, i.e. rejection or no reply to application for permits and licenses, rejection or no reply to application for performance of legal responsibility to protect personal and property rights, and failure to pay pensions. In essence, Article 11 confines the width of protection to covering no more than the personal and property rights of the ruled against

infringement by the rulers' specific administrative acts or in-actions. These rights cover life and health, personal reputation, residences, private ownership of properties, etc. Subsections one to seven of the article quote seven kinds of such infringement as examples of acceptable cases in administrative litigation. Subsection eight of the article inclusively states that infringement upon all other personal and property rights of the ruled by specific administrative acts of the rulers are subject to review by administrative litigation. As such, the width of protection is clear: personal and property rights of a legally sanctioned group of the ruled infringed by specific administrative acts of a legally defined group of the rulers (not all members of the ruled and rulers, see first and second diagnoses in the last two chapters).

It should be noted that as a result of the above restrictive stipulations, administrative litigation cannot protect even personal and property rights of the ruled if infringed by abstract administrative acts or political moves of the rulers. Furthermore, social and political rights of the ruled, such as the right to work, to education, to vote and to stand for election, the freedom of speech, of the press, of association, of assembly, of procession, of demonstration, and of religious belief, despite being guaranteed in the PRC's constitution, are not protected under the PRC's administrative litigation, even if infringed by specific administrative acts. As

such, the scope of protection in fact does not depend on what kinds of administrative acts, whether specific or abstract, by the rulers but on what kinds of rights of the ruled are in question. Nature of the rulers' administrative acts is just an additional qualification, as stated in Article 2 of the Law and repeated in Article 11. The kind of rights of the ruled ultimately determines the width of the scope of protection.

Having demarcated the width of protection, Article 12 of the Law inserts another exemption clause that constitutes an additional protection shield for the state and administration. The article reflects no scientific principle but strategic consideration of pragmatic needs which cuts across the boundary of specific and abstract administrative acts. It excludes four types of administrative acts (three specific and one abstract) from the scope of protection - acts of state, administrative rules and regulations, internal administrative personnel decisions, and specific administrative acts designated as final by the laws. Loosely defined, acts of state include such matters as national defense, diplomatic relations, declaration of curfew and other prerogatives of the Party and state. Any damage to the rights and interests of individuals or parties resulting from these acts cannot be remedied through administrative litigation. Administrative rules and regulations, commonly referred to as abstract administrative acts, is the underpinning of the rulers' rule over the ruled.

Whether legally enacted or not, reasonable or not, by the State Council or by local agents, these rules and regulations are carefully protected from challenge by administrative litigation courts because the opposite would shake the base of the rulers' rule. Internal personnel decisions of the administration on matters such as reward and punishment and appointment and dismissal of personnel are part of the nomenclatura system to maintain the Party's control of the state and administration. Based on political considerations, civil servants are required to give up their rights to protection by administrative litigation when they take up the job. Finally, specific administrative acts will not be within the scope of protection if the laws say so. There are presently four pieces of legislation which have preempted intervention by administrative litigation, and the exempted acts include issuance of certain kinds of patent, rejection of trade mark applications, decisions on public assembly and demonstration applications, fines and detention of aliens and nationals during entrance into and exit from the country.⁹

The depth of protection is the scope of judgment defined in Article 54 of the Law. The depth of protection refers to how far the courts shall adjudicate on the disputed specific administrative acts in accepted cases, whether it is about the facts of the cases, reasonableness of the administrative acts, or legality of the acts.

Knowing what kind of cases or administrative acts will be accepted in administrative litigation is not enough for defining the scope of protection if not knowing how far the courts shall adjudicate the cases and what remedies shall be provided. It is not protection (review or jurisdiction) at all if the court accepts a case but will not consider its substance and provides no judgment in the end. The depth of protection is as important as the width and it requires both the two if the scope of protection is to be fully described. By clarifying the range for the measure of legality, Article 54 of the Law outlines the depth of protection and the scope of judicial power of the courts.

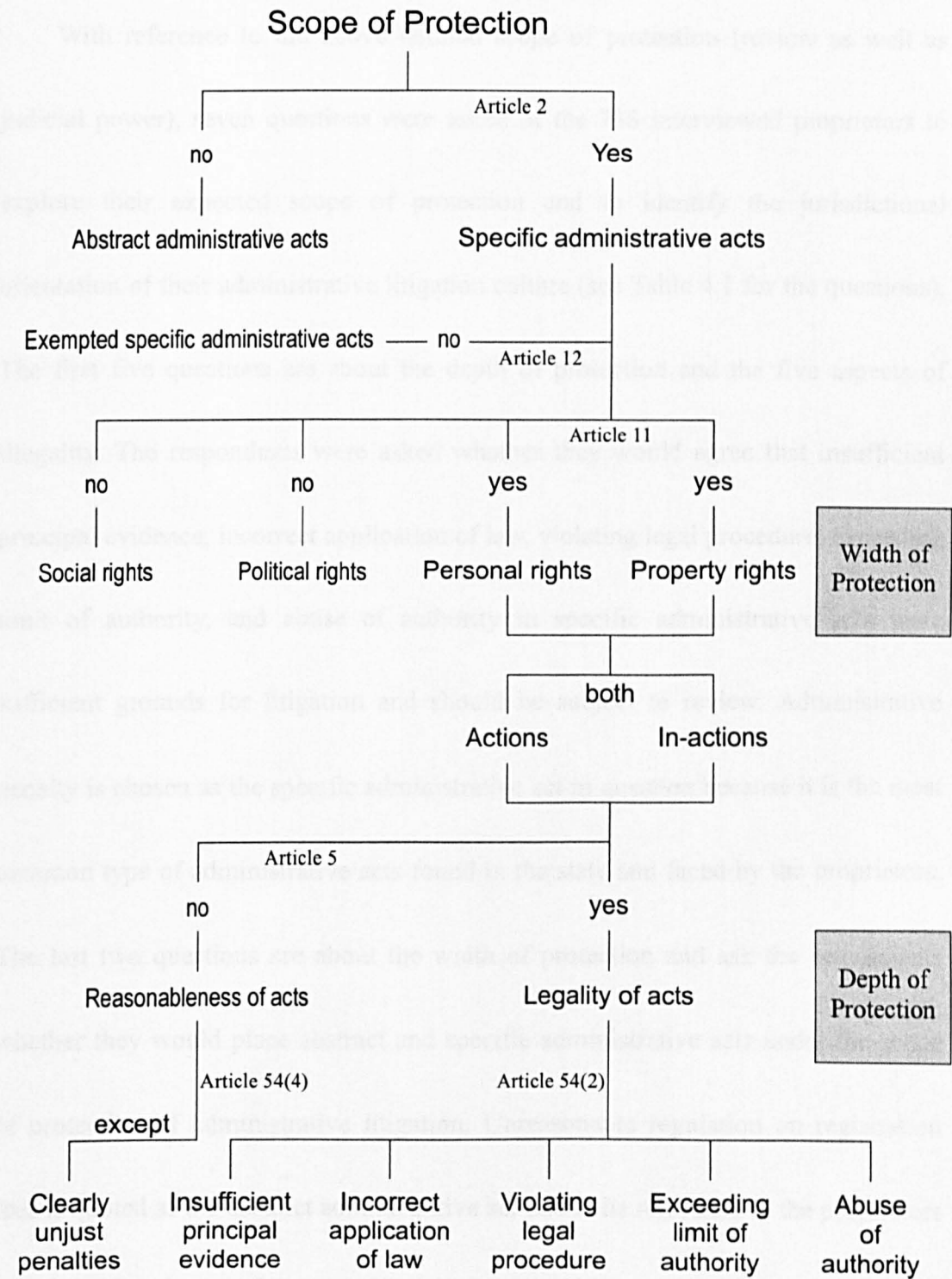
Article 54 stipulates that in respect of the administrative acts under question, the courts will check whether there are insufficient principal evidences, incorrect application of laws, violation of legal procedures, exceeding limit of authorities, and abuse of authorities. These are the five aspects to be examined in a measure of legality and the criteria to be met for an administrative act to be accepted as legal. An administrative act is legal and shall be upheld only when all these five aspects are clear. If any one is not, the court can order the act to be revoked. In other words, infringement on the personal and property rights of the ruled by specific administrative acts of the rulers will be corrected and the rights protected by

administrative litigation in so far as the acts are illegal in any one or more of the five aspects.

Having defined the measure of legality, Article 54 expands the depth of protection to include one particular measure on the reasonableness of administrative acts. In view of the serious problem with arbitrary and unreasonable administrative penalties in the mainland, subsection 4 of Article 54 allows the PRC's administrative litigation to provide help in case of clearly unjust administrative penalties. This is an individual allowance for the courts to review the reasonableness of one particular type of specific administrative acts. Administrative penalties are "clearly unjust" if they are disproportional to the accused wrongdoing of the ruled or in conflict with the purposes of the applied laws and administrative regulations. The courts will not intervene in any other unreasonable but lawful administrative acts of the rulers nor in unreasonable administrative penalties if lawful and not amounting to clearly unjust.

The scope of protection under the PRC's present administrative litigation as defined by the Law and explained in the above diagnosis is summed up in Figure 4.1 below.

Figure 4.1 The Scope of Protection under the PRC's Administrative Litigation



C. Jurisdictional Orientation of the Surveyed Individual Household Proprietors

With reference to the above defined scope of protection (review as well as judicial power), seven questions were asked of the 738 interviewed proprietors to explore their expected scope of protection and to identify the jurisdictional orientation of their administrative litigation culture (see Table 4.1 for the questions). The first five questions are about the depth of protection and the five aspects of illegality. The respondents were asked whether they would agree that insufficient principal evidence, incorrect application of law, violating legal procedure, exceeding limit of authority, and abuse of authority in specific administrative acts were sufficient grounds for litigation and should be subject to review. Administrative penalty is chosen as the specific administrative act in question because it is the most common type of administrative acts found in the state and faced by the proprietors. The last two questions are about the width of protection and ask the respondents whether they would place abstract and specific administrative acts under the scope of protection of administrative litigation. Unreasonable regulation on registration fees is quoted as the abstract administrative act due to its relevance to the proprietors and overcharging registration fees (unlawful requirement of performance of obligation) is listed as the specific administrative act.

1. Overall Level and Pattern of the Proprietors' Jurisdictional Orientation

The interviewed proprietors' jurisdictional orientation was clear and consistent, with their majority agreeing that all seven listed items should be within the scope of protection. In respect of the depth of protection, the proprietors were most concerned and certain with inappropriate use of power as requiring judicial review but they were a bit less assured with protection for due process. As many as 73.1 per cent and 68.8 per cent of the proprietors agreed that government officials' infringement upon citizens' rights by abuse of power and ultra vires were legitimate and sufficient causes to initiate administrative litigation, respectively (see Table 4.1 below). In particular, 30.0 per cent and 26.0 per cent "totally agreed" with litigation against those two aspects of illegality, respectively (see appendix 5). However, still 20.9 per cent and 21.2 per cent disagreed in the two cases. Slightly less of the proprietors believed illegality in the form of undue process deserved to be sued: 64.2 per cent for violating legal procedure, 61.5 per cent for insufficient principal evidence, and 60.9 per cent for incorrect application of law, against 20.4 per cent, 22.1 per cent and 17.1 per cent who stated the opposite views, respectively.

Table 4.1 Responses of the Proprietors to the Seven Jurisdictional Orientation Questions

		A	N	D	?	s.d.
12	Officials abuse their authority in awarding penalties to citizens.	q 534 % 73.1	30 4.1	153 20.9	14 1.9	1.32
13	Officials exceed the limit of their legal authority in awarding penalties to citizens.	q 503 % 68.8	41 5.6	155 21.2	32 4.4	1.30
14	Officials use the wrong regulation in awarding penalties to citizens.	q 441 % 60.9	86 11.9	124 17.1	73 10.1	1.15
15	Officials violate the legally prescribed procedure in awarding penalties to citizens.	q 464 % 64.2	48 6.7	147 20.4	63 8.7	1.22
16	Officials have insufficient essential evidence in awarding penalties to citizens.	q 443 % 61.5	62 8.6	159 22.1	56 7.8	1.24
17	Registration fees regulation made by government is unreasonable.	q 437 % 60.2	81 11.2	126 17.4	81 11.2	1.17
18	The Industry and Commerce Bureau collects registration fees in excess of the amount stipulated in the regulation.	q 456 % 62.8	59 8.1	141 19.5	70 9.6	1.25

A = Totally agree and agree;

N = Neutral;

D = Totally disagree and disagree;

? = Don't know;

s.d. = Standard deviation;

q = Frequency.

"Don't know" and "missing value" not included in the calculation of standard deviation.

As for the width of protection, the proprietors' degree of certainty was not as high as with inappropriate use of power but more or less the same with undue process. The unlawful specific administrative act of overcharging registration fees was deemed by 62.8 per cent of the proprietors as a legitimate ground for administrative litigation whereas 19.5 per cent deemed not. The unreasonable abstract administrative act of unjust regulation on registration fees was also considered as in need of and appropriate for judicial review by 60.2 per cent of the proprietors, but 17.4 per cent disagreed and there were over one-tenth who were neutral and another one-tenth who gave no answer. In short, the ruled sample

protested most strongly against inappropriate use of power and proclaimed most strongly their wish to have it controlled under administrative litigation, but their majority also wanted all kinds of illegal administrative acts, whether abstract or specific, to be corrected as well by administrative litigation.

Nevertheless, an observable divergence of view is found among the proprietors in respect of their jurisdictional orientation as reflected by the highest level of standard deviations in their above answers from 1.15 to 1.32 when compared with that in the other orientations. The proprietors appear to be divided into two sub-groups with opposing jurisdictional ideas – around three-fifth with positive views and around one-fifth with negative ones. Cross-tabulation of the proprietors' jurisdictional orientation answers confirms that there is strong consistency in the two sub-groups' orientation, e.g. those who agreed with one item to be within the scope of protection will have 75.6 per cent to 95.9 per cent among them who also agreed with the other six items to the same effect (details of the cross-tabulation results are not displayed due to space constraints). Such a level and pattern of jurisdictional orientation is summed up in the overall jurisdictional orientation scores of the sampled proprietors. Slightly over 60 per cent of the proprietors had a positive jurisdictional orientation, regarding the listed specific and abstract administrative

acts as sufficient and legitimate grounds for administrative litigation, whereas almost 20 per cent presented a negative jurisdictional orientation (see Table 4.2 below).

Table 4.2 Overall Jurisdictional Orientation Scores of the Proprietors

		A	N	D	?
Overall Jurisdictional Orientation	tq	3278	407	1005	389
	aq	468.3	58.1	143.6	55.6
	%	64.5	8.0	19.8	7.7

A = Totally agree and agree; N = Neutral; D = Totally disagree and disagree;
? = Don't know; tq = Total Frequency; aq = Average Frequency.

To sum up, different members of the ruled may have different jurisdictional orientations but the different aspects of illegality and different types of administrative acts do not make much difference in their jurisdictional orientation. Over 60 per cent of the proprietors agreed that all five aspects of illegality and both types of administrative acts should be subject to judicial review, i.e. infringement of citizens' rights by illegal administrative acts, whether abstract or specific, should be controlled and corrected. The present PRC's administrative litigation is in line with the jurisdictional orientation of the majority of the ruled sample except in the case of abstract administrative acts. Precluding the latter from the existing scope of protection is obviously against the will of the majority of the ruled sample.

2. Internal Relationship of the Proprietors' Jurisdictional Orientation

According to the Spearman's rho correlation measure, the proprietors' answers to the seven jurisdictional orientation questions were found to be mutually correlated with a perfect internal relationship and the overall level of correlation was very high, from 0.54 to 0.77 (see Table 4.3 below). In particular, three sets of answers had a significantly closer mutual relationship with rho coefficients from 0.69 to 0.77. One set was answers to the first two questions about misuse of power, another set was answers to the following three questions about undue process, and the last set was answers to the last two questions concerning abstract and specific administrative acts about the width of protection. Proprietors who agreed with abuse of power as sufficient ground for administrative litigation were also likely to agree with ultra vires as more than enough. Proprietors who found one kind of undue process as justifying administrative litigation would also found the others equally justifying. As for those who found illegal specific administrative acts satisfying the requirement for suing the government would also be likely to find abstract administrative acts equally satisfying.

Table 4.3 Spearman’s rho Correlation Coefficients for the Internal Relationship of the Proprietors’ Jurisdictional Orientation

Q	12	13	14	15	16	17	18
12		.77	.62	.65	.62	.54	.56
13	.77		.65	.68	.64	.58	.62
14	.62	.65		.72	.69	.54	.56
15	.65	.68	.72		.74	.55	.61
16	.62	.64	.69	.74		.56	.63
17	.54	.58	.54	.55	.56		.70
18	.56	.62	.56	.61	.63	.70	

Row highest in shade, average rho coefficient = 0.63.

Significance level at .05, 2-tailed.

To a lesser extent, answers to the first two questions were also closely related with answers to the following three, with rho coefficients from 0.62 to 0.68. Perhaps it is because they refer to the same kind of specific administrative actions, i.e. administrative penalties, and that all five questions concern the depth of protection. Together, their relationship with answers to the last two questions about the width of protection was a bit lower, with rho coefficients from 0.54 to 0.63.

When compared with the results in other orientations, the internal relationship of answers by the proprietors in this jurisdictional orientation was the highest, with an average internal correlation coefficient of 0.63. Such high level of internal consistency reflects the coherent nature of the questions on a precise issue, i.e. the

scope of protection, and the consistent though to certain extent opposing answers of the proprietors to these questions as mentioned above. Beyond doubt, the sampled ruled had a highly consistent and mostly positive jurisdictional orientation in their administrative litigation culture.

3. External Relationship of the Proprietors’ Jurisdictional Orientation

The proprietors’ jurisdictional orientation was found to have a very strong relationship with their other administrative litigation orientations, except the affective orientation (see Table 4.4 below). In fact, this orientation had the highest overall external relationship than the other five orientations as shown by the correlation coefficients (see Table 4.5), indicating that jurisdictional orientation is an important integral part of and has important significance to the proprietors’ overall administrative litigation culture.

Table 4.4 External Relationship of the Proprietors’ Jurisdictional Orientation

Orientation	Relationship
Cognitive	Fairly Strong
Affective	Small
Evaluational	Very Strong
Appraisal	Very Strong
Expectational	Perfect

As for the relationship with cognitive orientation, the proprietors' jurisdictional orientation answers related quite closely with their answers to cognitive orientation questions 1 and 2 about awareness of the litigation institution, but less closely with 4 and 5 about knowledge of the Law, and poorly with 3 on experience with suing the government. Proprietors having heard of the institution were likely to have a stronger and more affirmative jurisdictional orientation. Knowledge of the Law and experience with suing the government seemed to have a smaller association with the proprietors' jurisdictional idea about administrative litigation. In view of the poor in-depth knowledge of the proprietors about administrative litigation and the relationship pattern between their jurisdictional and cognitive orientations, it seems that the proprietors' jurisdictional idea about administrative litigation is mainly based on what they have heard of the institution (together with perhaps their experience with officialdom in their daily business) and not on what they really know about it. Even so, they appear to have a very mature and well-developed jurisdictional orientation, despite their weak cognitive basis. Overall phi correlation coefficients for the two orientations were not particularly high, ranging from 0.12 to 0.18 (see Table 4.5 below).

Table 4.5 Correlation Coefficients for the External Relationship of the Proprietors’ Jurisdictional Orientation

	Cognitive Orientation					Affective Orientation					Evaluational Orientation					Appraisal Orientation					Expectational Orientation									
Q	1	2	3	4	5	6	7	8	9	10	11	19	20	21	22	23	24	25	26	27	28	29	30	31	32	33	34	35	36	37
12	14	12		14							11	17	15	10	12	08	09		20	20	20	20	22	19	30	23	22	27	16	18
13		14		13							12	11	12	13	13		13	08	16	16	20	21	20	17	25	22	20	26	22	22
14	15	16			14		09		10		10	09	09	13	12	12	20	12	14	12	19	19	22	12	26	24	21	27	24	20
15		12	14	18	16						09	15	14	17	16	09	19	12	18	14	21	22	20	13	27	22	22	26	23	25
16	13	15		15	14									16	10	10	18	11	12	11	20	19	16	13	26	19	16	21	27	17
17	14	15							09		08		08	11	14	10	14	09	14	15	20	20	22	12	26	18	14	19	16	17
18	14										07	08		08	16	13	13		13	15	22	19	15	16	22	18	14	20	20	16

Phi correlation for Q1-5, rho for others, phi & rho coefficients at 2 decimal points.

Significance level at .05, 2-tailed.

A limited correlation was found between the proprietors’ jurisdictional and affective orientations, except for affective orientation question 11 on acquaintance with the institution. This can be partly explained by the stronger correlation between their jurisdictional and cognitive orientations just mentioned. It indicated that the proprietors’ affective orientation towards administrative litigation tended not to have a strong association with what they perceived as sufficient grounds for litigation. Affective orientation is more an emotional intuition whereas jurisdictional orientation is more a hard fact of life, and there may well be some distance between the two when they are put together. A detailed cross-tabulation analysis (results not displayed due to space constraints) of the proprietors’ jurisdictional and affective orientation answers also revealed no significant relationship between the two.

What are conceived by the proprietors as appropriate grounds for litigation reflect the scope of protection they intend for administrative litigation, this will affect the likely effects that they expect from the institution and the likely controversy they envisage for it. It is thus not surprising to find that their jurisdictional orientation is closely related with their evaluation and appraisal orientations. The proprietors' jurisdictional orientation answers were entirely correlated with their answers to three of the six evaluational orientation questions and seven of the eight affective orientation questions. Correlations with the rest were also quite high. Spearman's rho correlation coefficients of the proprietors' jurisdictional orientation with their evaluational orientation ranged from 0.08 to 0.20, and from 0.08 to 0.30 with their appraisal orientation (see Table 4.5 above).

Lastly, a perfect relationship was found between the proprietors' jurisdictional and expectational orientations. The way they envisage the scope of protection provided by the institution is found to tie with and contribute to the way they calculate the prospects of the institution, especially when the likely benefits are taken into consideration. Change in the former would likely be associated with change in the latter. Given a mostly affirmative jurisdictional idea, the proprietors were mostly optimistic with the future of administrative litigation and were prepared

to support its further development. The rho correlation coefficients for this external relationship were pretty high, from 0.14 to 0.27 (see Table 4.5 above).

4. Jurisdictional Orientation among Different Sub-Groups of Proprietors

According to the results of cross-tabulation analysis summarised in Table 4.6 below, the proprietors’ jurisdictional orientation was found to have strong relationship with six of their nine personal particulars, suggesting significant variations in the jurisdictional orientation of different sub-groups of the sample ruled based on their personal background (details of the extensive cross-tabulation results are not displayed due to space constraints).

Table 4.6 Relationship between the Proprietors’ Jurisdictional Orientation and Personal Particulars

Level of Relationship	Personal Particulars
Insignificant	Gender
Slightly Significant	Kind of Business Income
Significant	Age Political Status Working Years Residency Working District Education Level

Sub-Group with Insignificant Relationship

Similar to the results of the cognitive and affective orientations, gender did not have much association with the proprietors' jurisdictional orientation towards administrative litigation. Both gender sub-groups shared a similar jurisdictional idea. However, male proprietors tended to be slightly more definite in their answers, whether agreeing or disagreeing whereas the females had slightly more neutral and "don't know" answers. The phi correlation measure also could not find a significant relationship between gender and jurisdictional orientation of the proprietors (see Table 4.7 below).

Table 4.7 Correlation Coefficients for the Proprietors' Jurisdictional Orientation and Personal Particulars

Appraisal Orientation Question	Gender	Age	Political Status	Working Years	Kind of Business	Residency	Working District	Income	Education Level
12		.10		.13			.15		
13		.11		.08			.16		
14		.16		.14		.17	.14		
15		.14		.13		.16	.16		
16		.17		.13		.16	.12		
17		.10				.16	.12		
18		.10					.16		.09

Phi for gender & residency, Spearman's rho for age, working years, income & education level.

Cramer's V for political status, kind of business & working district.

Significance level at .05, 2-tailed, negative in shade.

Sub-Groups with Slightly Significant Relationship

Proprietors in different kind of business performed quite similarly in their jurisdictional orientation, except for those in the repairing industry. Proprietors in the three kinds of retailing, catering and servicing industries had a jurisdictional orientation similar to the group norm, whereas those in the repairing business were much more jurisdictionally prepared than the other three sub-groups to accept a full-fledged administrative litigation. The repairing sub-group had the highest percentage of affirmative answers, above or around 80 per cent, and the lowest percentage of objections in all seven jurisdictional orientation questions. Political status and working years may be two intervening factors for the repairing sub-group's positive jurisdictional orientation since the sub-group tended to have Party membership and long years of service, which were found related with a positive jurisdictional orientation (see discussion below). The Cramer's V correlation measure on this personal particular with the proprietors' jurisdictional orientation did not have significant findings (see Table 4.7 above).

Similar to the results of the cognitive and affective orientations, the proprietors' income was found to have a slightly significant relationship with their jurisdictional orientation in that there was no direct relationship between the two but a fairly

consistent up-down relationship was noticeable. That might be due to influence of intervening factors that were found to have significant relationship with the proprietors' administrative litigation orientations. The Spearman's rho correlation analysis also could not provide significant findings (see Table 4.7 above).

Sub-Groups with Significant Relationship

Age was found to have a significantly positive relationship with the proprietors' jurisdictional orientation, i.e. the higher the age, the stronger the jurisdictional idea. The youngest age sub-group of 18-30 had the most negative overall jurisdictional orientation, with the highest percentage disagreeing with the listed grounds for litigation in all seven jurisdictional orientation questions. The next youngest age sub-group of 31-40 followed with the second highest percentage of opposing views in most of the questions. As for the more mature proprietors, especially for those between 41 and 60, they shared quite similar jurisdictional ideas, mostly agreeing with the listed grounds for litigation, with a very low percentage taking the opposite views. Yet, those over 60 were more fluctuating, with answers more at the two extremes. Similar to the affective orientation, the age of 40 appeared to be an important turning point correlating with a difference in the proprietors' affective feelings and jurisdictional ideas about administrative litigation. The two generations who were born before and after China's socialist transformation in the

late 1950s seemed to have quite different orientations towards administrative litigation. The Spearman's rho correlation coefficients showed that age of the proprietors was significantly correlated with their answers to all the seven jurisdictional orientation questions by -0.10 to -0.17 (see Table 4.7 above), confirming the above significant positive relationship.

Discarding the two democratic parties proprietors because of their lack of statistical representativeness, distinct pattern of jurisdictional orientation was found among the other three political status sub-groups. A significantly stronger and more positive jurisdictional orientation was found among proprietors with Communist Party membership. They had the highest percentage who agreed with the circumstances in all seven jurisdictional orientation questions as sufficient grounds for litigation. On the contrary, proprietors belonging to the Communist Youth League had the least positive jurisdictional orientation, with the highest percentage who disagreed with all seven listed circumstances as sufficient grounds for litigation. Age might be an important intervening factor here because proprietors belonging to the Communist Youth League were mostly the younger age sub-group of the sample whereas proprietors with Communist Party membership were mostly the older age sub-group (see Appendix 7). The independent proprietors were situated in-between

the two. It is obvious that different political sub-groups had different jurisdictional orientations towards administrative litigation. However, the Cramer's V correlation measure could not generate significant findings for this personal particular (see Table 4.7 above).

Similar to the situation with age, there is a basically positive relationship between the proprietors' years of work in the job and their jurisdictional orientation. For those who had just entered the industry for less than a year, their jurisdictional idea was neither too well established nor too positive. They had the highest percentage of neutral answers for most of the jurisdictional orientation questions and quite a lot of them disagreed with the circumstances as grounds for litigation. For the next senior sub-group with 1-3 years in the job, they had the least positive jurisdictional orientation, as they had the highest percentage who disagreed with the circumstances as grounds for litigation in six of the seven questions. For those who had longer working years in the profession and more experience in dealing with the government, their jurisdictional idea became more and more affirmative. The sub-group with 7-10 years as proprietors had the highest percentage agreeing with the causes for litigation in six of the seven questions, and the lowest percentage disagreeing in five. This trend reversed a bit for those with over ten years as

proprietors but they still had a much more positive jurisdictional idea than those with less than three years. These all indicated a significantly positive relationship between the proprietors' years of work and their jurisdictional orientation. Spearman's rho correlation measure also confirmed a significant relationship of -0.07 to -0.14 between the proprietors' age and their answers to the five jurisdictional orientation questions about the depth of protection (see Table 4.7 above).

Residency did bear a significant relationship with the proprietors' jurisdictional orientation towards administrative litigation, but age, working years and political status might be important intervening factors here. Proprietors with Beijing residency, who tended to be senior in age and working years and belong to the Communist Party, consistently had a higher percentage who agreed with the circumstances in all seven jurisdictional orientation questions as sufficient for initiating litigation. By way of contrast, proprietors without residency, who tended to be junior in age and working years and belong to the Communist Youth League, consistently had a higher percentage who disagreed with the circumstances in all seven questions as sufficient. The difference was on average up to 8 per cent. The phi correlation coefficients also indicated a significant relationship between

residency and answers to jurisdictional orientation questions 14-17 by 0.16-0.17 (see Table 4.7 above).

Proprietors working in different districts had quite polarised jurisdictional orientations towards administrative litigation, but again age, working years and political status might be important intervening factors here. Those in Hai Dian district, who tended to be younger, with shorter years of work and Communist Youth League membership, were much more reserved. They had the least percentage of agreeing answers to the jurisdictional questions and had a significantly higher percentage of objection to all seven jurisdictional orientation questions than those in the other two districts. At the opposite pole were proprietors working in Xuan Wu district, who tended to be older, with longer years of work and Communist Party membership. This sub-group was overwhelmingly affirmative in their jurisdictional orientation, with a significantly higher percentage who agreed with the circumstances for litigation in all seven questions than the other two sub-groups. Those in Xi Cheng were almost mid-way between the two poles. The Cramer's V correlation coefficients also showed that the proprietors' place of work was significantly correlated with their answers to all seven jurisdictional orientation questions by 0.12 to 0.16 (see Table 4.7 above).

In general, jurisdictional orientation of the proprietors tended to be positively related with their education level, except that the lowest education sub-group with only primary education performed very differently. The percentage of affirmative answers to all five questions concerning the depth of protection increased gradually from secondary level of education onward, reaching the highest at undergraduate and above level, the opposite applied for negative answers. This suggested that higher education tended to make the respondents more aware of and concerned with illegality of administrative acts. However, it should be noted that for the lowest education sub-group of primary only, they had the second highest percentage of affirmative answer to all the five questions, suggesting that though they were less educated, they still had a very affirmative jurisdictional idea about the depth of protection, not much inferior to that of the highest educated sub-group. On the other hand, answers to the two questions about the width of protection were more inconsistent. The distribution of scores was more random except that the lower secondary sub-group had the highest percentage of negative answers and the undergraduate and above sub-group had the highest percentage of neutral answers. The Spearman's rho correlation coefficients of this personal particular did not reveal a significant correlation except with answers to the last jurisdictional orientation question (see Table 4.7 above).

In summary, when compared with the cognitive and affective orientations, the proprietors' jurisdictional orientation was much more closely related with and hence tied to their personal particulars, six of which were found to have close association with their jurisdictional ideas. Age and education level were found to be two common personal particulars significantly related to not only the proprietors' cognitive and affective orientations but also to their jurisdictional orientation. While working years and political status only had a slightly significant relationship with the proprietors' cognitive and affective orientations, they had a more significant relationship with the proprietors' jurisdictional orientation. Residency and working district were also found to have a close relationship with the proprietors' jurisdictional orientation, but age, working years and political status might be important intervening factors affecting the nature and degree of those relationships. On the whole, maturity and seniority in the form of experience in life and experience with officialdom seem to be two basic factors causing difference in the proprietors' jurisdictional ideas about administrative litigation. Other situational factors like residency and place of work, and to a lesser extent the political factor of party membership, the economic factor of monthly income and the academic factor of education level, also bring in variation to the ultimate jurisdictional orientation of the sampled ruled's administrative litigation culture.

D. Jurisdictional Orientation of the Surveyed Government Officials

The same seven jurisdictional orientation questions were asked of the 152 interviewed officials to unravel their conceded scope of review for administrative litigation and to locate the jurisdictional orientation of their administrative litigation culture. Their responses are presented and discussed below in the same way that the responses of their ruled counterparts are presented above, together with a comparison between the two.

1. Overall Level and Pattern of the Officials' Jurisdictional Orientation

In terms of both the overall level and pattern of orientation, jurisdictional ideas of the interviewed officials differ quite significantly from that of the proprietors and between the width and depth of judicial review. The officials had a much higher level and a much more affirmative pattern of jurisdictional orientation in respect of the depth of review for administrative litigation than that of the proprietors as well as the width of review.

Like the proprietors, inappropriate use of authority was regarded by the highest

percentage of officials as deserving judicial review. But the percentage among the officials was much higher, reaching 92.8 per cent for abuse of power and 92.1 per cent for ultra vires which were 19.7 per cent and 23.3 per cent higher than that of the proprietors, respectively (compare Table 4.8 below with Table 4.1 above). The opposite view of objecting to the two as demanding judicial review added up to only 3.9 per cent and 2.7 per cent of the officials which were 17.0 per cent and 18.5 per cent lower than that of the proprietors, respectively. To a lesser extent, such an overwhelmingly affirmative pattern of results was also recorded for the other three aspects of illegality – 86.8 per cent as opposed to 5.3 per cent for violating legal procedure, 80.3 per cent to 7.9 per cent for incorrect application of law, and 79.5 per cent to 8.0 per cent for insufficient principal evidence. When compared with the proprietors, the level of endorsing versus opposing responses of the officials for these three aspects of illegality were 18.0 per cent to 23.9 per cent higher and 9.2 per cent to 15.1 per cent lower than that of the proprietors, respectively. In a word, the officials displayed an overwhelmingly affirmative jurisdictional orientation in support of the depth of judicial review with a high level of consensus (standard deviations as low as 0.66 to 0.84) and the percentage of officials holding such an idea was much greater than that of the proprietors.

Table 4.8 Responses of the Officials to the Seven Jurisdictional Orientation Questions

			A	N	D	?	s.d.
12	Officials abuse their authority in awarding penalties to citizens.	q	141	4	6	1	0.74
		%	92.8	2.6	3.9	0.7	
13	Officials exceed the limit of their legal authority in awarding penalties to citizens.	q	140	6	4	2	0.66
		%	92.1	3.9	2.7	1.3	
14	Officials use the wrong regulation in awarding penalties to citizens.	q	122	14	12	4	0.84
		%	80.3	9.2	7.9	2.6	
15	Officials violate the legally prescribed procedure in awarding penalties to citizens.	q	132	9	8	3	0.77
		%	86.8	5.9	5.3	2.0	
16	Officials have insufficient essential evidence in awarding penalties to citizens.	q	120	15	12	4	0.84
		%	79.5	9.9	8.0	2.6	
17	Registration fees regulation made by government is unreasonable.	q	72	28	43	9	1.11
		%	47.4	18.4	28.3	5.9	
18	The Industry and Commerce Bureau collects registration fees in excess of the amount stipulated in the regulation.	q	104	19	26	3	1.02
		%	68.4	12.5	17.1	2.0	

A = Totally agree and agree;

N = Neutral;

D = Totally disagree and disagree;

? = Don't know;

s.d. = Standard deviation;

q = Frequency.

"Don't know" and "missing value" not included in the calculation of standard deviation.

The officials' jurisdictional idea about the width of review was significantly less affirmative than their idea about the depth of review, more comparable to that of the proprietors, and more in line with the present practice of the PRC's administrative litigation. Comparable to the proprietors, only 68.4 per cent of the officials agreed that an illegal specific administrative act should be subject to judicial review, just 5.6 per cent higher than that of the proprietors, and a substantial 17.1 per cent disagreed with that, just 2.4 per cent lower than that of the proprietors. In line with the present practice of administrative litigation, as low as 47.4 per cent

of the officials agreed to include unreasonable abstract administrative acts in the scope of judicial review which was 12.8 per cent lesser than that of the proprietors, and as many as 28.3 per cent objected to do so which was 10.9 per cent higher than that of the proprietors. Due to more disagreeing answers, the standard deviations for the officials' responses to these two jurisdictional orientation questions about the width of review were slightly greater than that about the depth of review, reaching 1.11 and 1.02, respectively.

Given a much higher level of cognition among the officials and that 73.7 per cent of them had studied the law, it is not surprising to find that they had a higher level and more affirmative pattern of jurisdictional orientation towards administrative litigation than the proprietors in respect of the depth of protection and that significantly more of them could distinguish between abstract and specific administrative acts. However, if they had internalised the Law and responded accordingly, there should not be as much as a 13.3 per cent difference in agreeing with the five aspects of illegality as sufficient grounds for litigation. Also, there should not be as many as 31.6 per cent of them not agreeing with an illegal specific administrative act as liable to litigation and as many as 47.4 per cent agreeing with unreasonable abstract administrative act as sufficient. It suggests that the officials'

answers to a certain extent reflect their intrinsic response and personal conception about the scope of review, not just a simple repetition of the official standpoint. On the other hand, it appears that the officials' awareness of due process is relatively weaker than their recognition of the need for proper execution of authority. It also suggests that restricting the present administrative litigation to specific administrative acts is against the will of not just over half of the interviewed proprietors but also nearly half of the sampled officials.

From the above findings, it is obvious that the officials' jurisdictional ideas about the width and depth of review are very different. They overwhelmingly agree that administrative litigation is to review the legality of administrative acts but they are not as sure about where should administrative litigation apply. Much less of them are prepared to accept litigation against illegal specific administrative acts and even less in respect of unreasonable abstract administrative acts. As a whole, 78.2 per cent of the officials agreed with the seven listed circumstances as sufficient grounds for litigation whereas only 10.4 per cent held the opposite view (see Table 4.9 below). These compare favourably to that of the proprietors' 64.5 per cent and 19.8 per cent, respectively. However, the jurisdictional orientation of the officials should not be taken as significantly stronger and much more affirmative than that of the

proprietors on the base of these numerical calculations. If not matched by an equally wide conception about the width of review, only an overwhelming affirmative idea on the depth of review is not sufficient to form an ultimate open and broad jurisdictional orientation towards administrative litigation.

Table 4.9 Overall Jurisdictional Orientation Scores of the Officials

		A	N	D	?
Overall Jurisdictional Orientation	tq	831	95	111	26
	aq	118.7	13.6	15.9	3.7
	%	78.2	8.9	10.4	2.5

A = Totally agree and agree; N = Neutral; D = Totally disagree and disagree;
 ? = Don't know; tq = Total Frequency; aq = Average Frequency.

2. Internal Relationship of the Officials' Jurisdictional Orientation

A perfect correlation in the officials' answers to all seven jurisdictional orientation questions was also found as in the case of the proprietors but the overall level of correlation was not as high, with Spearman's rho correlation coefficients only between 0.33 and 0.76, obviously lower than the proprietors' 0.54 and 0.77 (compare Table 4.10 below and Table 4.3 above). Like the proprietors, the same pattern of three sets of more closely related answers was found for the officials. The sampled rulers' answers to the first two questions about misuse of power were

closely related with a rho coefficient of 0.72. Their answers to the next three questions about the other three aspects of illegality had a similar correlation with rho coefficients between 0.60 and 0.76. Their answers to the last two questions about the width of review were also correlated by rho coefficient of 0.65. Again, correlations among answers to the first five questions on the depth of protection (rho 0.53-0.76) were higher than their correlations as a whole with answers to the last two questions on the width of protection (rho 0.33-0.60).

Table 4.10 Spearman’s rho Correlation Coefficients for the Internal Relationship of the Officials’ Jurisdictional Orientation

Q	12	13	14	15	16	17	18
12		.72	.56	.63	.53	.33	.59
13	.72		.64	.71	.57	.43	.60
14	.56	.64		.76	.69	.38	.52
15	.63	.71	.76		.60	.42	.56
16	.53	.57	.69	.60		.40	.55
17	.33	.43	.38	.42	.40		.65
18	.59	.60	.52	.56	.55	.65	

Row highest in shade, average rho coefficient = 0.56.

Significance level at .05, 2-tailed.

When compared with the results in other orientations, the internal relationship of the officials’ jurisdictional orientation answers was only the second highest, next to evaluational orientation, and was lower than that of the proprietors. The average

internal correlation coefficient was 0.56. Because of the specific focus in the jurisdictional orientation questions, i.e. scope of review or protection for administrative litigation, the nature of the questions is much more alike, hence a close relationship among the answers to the questions can be expected. However, the internal consistency of the officials' jurisdictional orientation answers was not as high as that of the proprietors because the officials had a very different jurisdictional idea between the width and depth of review under administrative litigation.

3. External Relationship of the Officials' Jurisdictional Orientation

Unlike the proprietors, the officials' jurisdictional orientation did not have a very strong external relationship with their other orientations. Besides a strong relationship with their evaluational orientation, their jurisdictional orientation was only fairly strongly related with their expectational orientation. Other than that, there was no significant relationship with the other three cognitive, affective and appraisal orientations (see Table 4.11 below).

Table 4.11 External Relationship of the Officials' Jurisdictional Orientation

Orientation	Relationship
Cognitive	Small
Affective	Small
Evaluational	Very Strong
Appraisal	Small
Expectational	Fairly Strong

The officials' answers to six of the seven jurisdictional orientation questions had perfect positive correlation with their answers to all six evaluational orientation questions, with Spearman's rho correlation coefficients between 0.16-0.50, which were significantly higher than the proprietors' 0.08-0.20 (see Table 4.12 below). The exception was jurisdictional orientation question 17 about unreasonable abstract administrative acts as a cause for litigation. The strong relationship between the two orientations suggests that those officials who agree with those listed circumstances, except abstract administrative act, as sufficient grounds for litigation by the citizens, will also tend to believe in the potential benefits that the institution of litigation can bring, especially in reducing the abuse of power by government officials and promoting the idea of rule of law in the society.

Table 4.12 Correlation Coefficients for the External Relationship of the Officials' Jurisdictional Orientation

	Cognitive Orientation					Affective Orientation					Evaluational Orientation					Appraisal Orientation										Expectational Orientation							
Q	1	2	3	4	5	6	7	8	9	10	11	19	20	21	22	23	24	25	26	27	28	29	30	31	32	33	34	35	36	37	38	39	40
12		34		31		20		17				39	33	40	43	28	29	24											29	33	37		26
13	31					25		17				35	37	43	50	29	32	18									23		28	33	32		
14					50	27				17		28	30	37	41	24	30	20									19		17	20	24	21	26
15					37	25						36	32	37	37	27	38	17								17			34	31	33	17	22
16	30	33			33	20						16	25	23	37	28	30	21					16				21			21	18		19
17	32		33					16							17		19						18										
18		30	31			18		27				26	29	31	39	29	29	16					18						24	27	29		23

Phi correlation for Q1-5, rho for others, phi & rho coefficients at 2 decimal points.
Significance level at .05, 2-tailed, negative in shade.

Based on a particular jurisdictional idea about the scope of undertaking for administrative litigation, the benefits of the latter can then be estimated and so as its prospects. The officials' jurisdictional and expectational orientations towards administrative litigation had indeed a fairly strong relationship, with Spearman's rho correlation coefficients from 0.17 to 0.37, which are slightly higher than the proprietors' 0.14-0.27 (see Table 4.12 above). Same as for the proprietors, an affirmed jurisdictional idea about the scope of review (protection) for administrative litigation is associated with a strong wish in support of the latter's development in the administrative litigation culture of the officials, especially when taking into account the benefits that the institution will bring. The only exception was answers to expectational orientation question 39 about judicial independence as a condition

for developing administrative litigation, which did not have a strong relationship with the jurisdictional orientation answers of the officials. It seems that even when the officials are ready to accept a large scope of review for administrative litigation, they may not be equally ready to accept judicial independence as tied with the development of administrative litigation.

4. Jurisdictional Orientation among Different Sub-Groups of Officials

The jurisdictional orientation of specific officials’ sub-groups according to their personal particulars is analysed by means of cross-tabulation and the results are summarised in Table 4.13 below.

Table 4.13 Relationship between the Officials’ Jurisdictional Orientation and Personal Particulars

Level of Relationship	Personal Particulars
Insignificant	Department
Slightly Significant	Gender Income
Significant	Age Political Status Working Years Working District Education Level

Sub-Group with Insignificant Relationship

There were six major departments where over 90 per cent of the interviewed officials came from, but this factor alone did not manifest a significant relationship with the officials’ jurisdictional orientation. The Cramer’s V correlation analysis also revealed that there was no significant relationship between the two (see Table 4.14 below).

Table 4.14 Correlation Coefficients for the Officials’ Jurisdictional Orientation and Personal Particulars

Appraisal Orientation Question	Gender	Age	Political Status	Working Years	Department	Working District	Income	Education Level
12								
13								
14			.24			.25		
15								
16								
17								
18		.18						

Phi for gender, Spearman’s rho for age, working years, income & education level.
Cramer’s V for political status, department & working district.
Significance level at .05, 2-tailed, negative in shade.

Sub-Groups with Slightly Significant Relationship

As in the cases of cognitive and affective orientations, the gender of officials once again was found to have only a slightly significant relationship with their

jurisdictional orientation. While male officials had the highest percentage who agreed with five of the seven listed circumstances as legitimate grounds for litigation, female officials had the highest percentage who disagreed with all seven. While male officials gave more neutral answers, female officials admitted more 'don't know' answers. This suggested that female officials had more reservations and objecting views in their jurisdictional orientation whereas male officials had relatively more affirmative jurisdictional orientation towards administrative litigation.

Cross-tabulation of the officials' income with their jurisdictional orientation showed a random distribution of scores but a slight difference was still discernible among the various income sub-groups. Taken as a whole, more officials of the lowest income sub-group of RMB301-600 regarded the listed circumstances as legitimate causes for litigation. On the contrary, more officials of the highest income sub-group of RMB1001-1500 disputed their legitimacy. The intermediate sub-group did not show a strong tendency. It can be roughly concluded that income of the officials has a slightly significant relationship with their jurisdictional orientation, which is negative in the sense that higher income tends to associate with a less positive jurisdictional orientation.

Sub-Groups with Significant Correlation

The youngest sub-group of officials between the age of 18-30 was relatively less mature in their jurisdictional orientation. They were the sub-group most concerned with misuse of power, but least insistent on correct application of law and sufficient evidence. The next older sub-group of 31-40 was jurisdictionally most receptive of administrative litigation. When compared with their juniors, they were more concerned with due process and enough evidence, while not much less with misuse of power. They were also most ready to accept litigation based on both abstract and specific administrative acts. On the other hand, the eldest sub-group of 41-50 was most resistant to administrative litigation. They had the highest percentage who disagreed with all the five aspects of illegality and the two types of administrative acts as sufficient grounds for litigation. Taken together, age as a variable in the officials' jurisdictional orientation seems to have repeated the same characteristic as in the case of cognitive and affective orientations. Younger officers have more similar scores and difference becomes more tangible after the age of 40. Once beyond 40, officials tend to have more reservations about and resistance to administrative litigation. Their jurisdictional orientation becomes less affirmative despite the endorsing provisions in the Law. The Spearman's rho correlation analysis identified significant relationship between the officials' age and their

answers to jurisdictional orientation question 18 about illegal specific administrative acts, but the coefficient was not very high, only 0.18 (see Table 4.14 above).

All officials, with or without party membership, overwhelmingly conceived that citizens should be allowed to sue the government if the latter misused its power. However, party membership did associate with an observable difference in the officials' jurisdictional idea in respect of the other causes for litigation. Officials with affiliation to the Communist Party or Communist Youth League conceded less to administrative litigation, with a significantly higher percentage who rejected the other causes for litigation when compared with officials without political affiliation. The latter concurred more with the institution, with a significantly higher percentage ready to support the citizens' right to go to court in those causes besides misuse of power as well as in respect of abstract administrative acts. As such, political affiliation seems to have a negative relationship with the officials' jurisdictional orientation towards administrative litigation. However, the Cramer's V correlation analysis did not have much significant findings except one for this personal particulars (see Table 4.14 above).

As in the case of affective orientation, working years is found to have a zigzag

relationship with the officials' jurisdictional orientation. But the overall trend is that their jurisdictional orientation gradually changes in a positive direction over their years of work. For those new recruits with less than one year in the job, they were most defensive and out of tune with the official line. They had the highest percentage who objected to all five aspects of illegality as qualifying the citizens to sue the government but agreeing with litigation against unreasonable policy. For those with longer service, they became less defensive and defiant, with significantly more neutral answers in all jurisdictional orientation questions. For those reaching 7-10 years of service, they had the highest overall support for the institution, though not necessarily for the Law. They had the highest percentage who agreed with all five aspects of illegality as causes for litigation, mostly without opposing view, and many of them also approved litigation based on the two types of abstract and specific administrative acts. Those with over ten years in the job appeared to have fewer agreeing jurisdictional answers than those next junior to them, but the difference was not very significant.

Working district as a personal particular correlated quite consistently with the officials' jurisdictional orientation and officials of different district had quite different jurisdictional orientation. Hai Dian district officials tended to have a higher

percentage of neutral answers especially in respect of the width of judicial review, Xi Cheng district officials tended to have a higher percentage of objection to the circumstances as grounds for litigation, whereas officials of Xuan Wu district tended to have a higher percentage of approval. Age and working years might be important intervening factors here because Hai Dian officials tended to be younger in their age and service whereas Xuan Wu district officials tended to be older in both. The Cramer's V correlation analysis turned out no significant findings except one for this personal particulars (see Table 4.14 above).

Education level as the last personal particular was found to have a positive relationship with jurisdictional orientation of the officials. Officials with a lower level of education tended to have a higher level of disagreement with the proposed scope of judicial review, whereas those with a higher level of education tended to have a higher level of assent. That relationship was not particularly strong but still obvious. However, the Spearman's rho correlation analysis produced no significant findings (see Table 4.14 above).

In summary, departmental difference was not detected in the officials' jurisdictional orientation towards administrative litigation but five other personal

particulars were found to have a significant relationship with the level and pattern of their jurisdictional orientation. In simple terms, officials who were between 31-40 years of age and 7-10 years of service, had no political affiliation, but had higher level of education, were more likely to endorse the listed circumstances as sufficient grounds for administrative litigation and hence, present a wider and stronger jurisdictional orientation than their colleagues.

E. Summary

Jurisdictional orientation, not included in previous political culture studies, is specifically added in this study of administrative litigation culture in the PRC and is used here to refer to the ruled's opinion about the scope of protection and the rulers' opinion about the scope of review for administrative litigation. When the scope of protection and review, or jurisdiction, of the PRC's administrative litigation is examined based on relevant provisions of the PRC's Administrative Litigation Law, it is obvious that the two are highly restricted. The width of protection and review, stated in Article 11 of the Law, is confined to cases where the personal and property rights of the legally recognised citizens, legal persons and other organisations are infringed by specific administrative acts of administrative agents. The depth of

protection and review, found in Article 54 of the Law, terminates at correcting illegal specific administrative acts in terms of insufficient principal evidence, incorrect application of law, violating legal procedure, ultra vires, and abuse of power, plus modifying clearly unjust administrative penalties. Such width and depth are certainly wider and more in-depth than during the earlier period when administrative litigation was conducted under the 1982 Civil Procedure Law. However, they are certainly not enough for establishing a full-fledged administrative litigation for the country and are found not sufficient in certain respects according to the opinions of the interviewed members of the ruled and rulers, not to mention the criticisms by many mainland judicial officials and law experts.

Interviewed members of the ruled fall into two opposing groups with divergent opinions. The majority group of more than 60 per cent shows a positive jurisdictional orientation, agreeing with the five listed aspects of illegality and both types of abstract and specific administrative acts as legitimate causes for litigation. In particular, they protested most strongly against inappropriate use of power by government officials but they would like to have all kinds of illegal administrative acts, whether abstract or specific, to be corrected by administrative litigation. Precluding abstract administrative acts from the existing scope of protection is

obviously against the will of this majority group. On the other hand, there is a minority group of around 20 per cent who holds a negative jurisdictional orientation, disagreeing with the seven suggested items as good grounds for litigation. This seems to confirm the observation that the idea of rule of law is still not yet prevalent in the mainland, especially among the ruled. Quite a lot of the latter would not just tend not to use legal action as an alternative for resolving disputes but even reject the idea of doing so.

Jurisdictional idea of the interviewed members of the rulers is more affirmative than that of their ruled counterparts in terms of what constitutes illegal administrative acts but less so in what constitutes the width of review for administrative litigation. Despite the fact that lack of due process is of less common concern than inappropriate use of power, still around 80 to 90 per cent of them have no objection to the statement that the five listed aspects of illegality are wrong and should be grounds for the ruled to sue the rulers. However, significantly more of them distinguish between abstract and specific administrative acts, not conceding the former for review by administrative litigation. To a certain extent, their responses reflect their acceptance of the scope of review under the present PRC's administrative litigation but certain personal opinions away from the official

standpoint are also found. In particular, nearly half of them agree with the sampled ruled that abstract administrative acts should also be subject to judicial review.

A perfect internal relationship is found in the jurisdictional orientation answers of both the ruled and rulers samples, indicating a high level of internal consistency in their jurisdictional ideas especially for the ruled sample. As for the latter, their jurisdictional orientation also has the highest level of external relationship in their overall administrative litigation culture, having a very strong association with their other evaluational, appraisal, and expectational orientations. It is obvious that members of the ruled not only possess a clear and coherent idea about what should or should not be the scope of protection for administrative litigation, but such an idea also forms an integral part of their overall administrative litigation culture, affecting or being affected by their evaluation, appraisal and expectation of the institution. As for the rulers sample, their jurisdictional orientation is not just less consistent than that of their ruled counterparts, but is also much less related with their other orientations, suggesting that it is more independent in their overall administrative litigation culture.

Finally, jurisdictional orientation is quite significantly related to the personal

background of both the ruled and rulers. Older and more experienced members of the ruled who are more mature or have more interaction with officialdom, have local residency, serve in the repairing business, work in Xuan Wu district, or have more education are likely to have more positive and stronger jurisdictional ideas. On the other hand, members of the rulers who have been in the job for a sufficient but not too long period of time, with 31-40 years of age, 7-10 years of service, without political obligation, but higher level of education, and particularly those working in Xuan Wu district and belonging to the male gender, are likely to have more positive and more affirmative jurisdictional ideas. In retrospect, jurisdictional orientation of both the ruled and rulers seems to vary more with their individual background, e.g. age and experience with officialdom, than with their affective bearing towards administrative litigation like support for and caring about the institution.

A Cultural Study of Administrative Litigation in the People's Republic of China

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Chapter 5 Evaluational Orientation and Consequences of Administrative Litigation in the PRC

In the last three chapters, we have reviewed the top-down establishment, problematic implementation and confined jurisdiction of the PRC's administrative litigation, related articles of the PRC's Administrative Litigation Law, as well as the cognitive, affective, and jurisdictional orientations of the ruled and rulers samples, respectively. We shall now turn to examine the consequences of the PRC's administrative litigation and the evaluational orientation of the ruled and rulers samples in this chapter. Four related chapters of the Law will also be diagnosed to reveal how their rigid stipulations, among others, affect the latitude and gravity for the accomplishment of those consequences.

A. Consequences of Administrative Litigation in the PRC

Unlike the earlier discussed issues of setting-up, implementation and scope of jurisdiction, the consequences of administrative litigation in the PRC are much less seriously disputed but more commonly acclaimed by most parties, including the ruled and rulers. But that does not mean that the consequences of administrative

litigation are distinct and not related with the latter's setting-up, implementation and scope of jurisdiction. Top-down establishment of the institution has cushioned many of its potential constraints on the rulers. Problematic implementation has deprived many of its potential relief for the ruled. Confined scope of jurisdiction has undermined the accomplishment of the full range of potential consequences of administrative litigation in the mainland. These suggest once again that the PRC's administrative litigation is not doing its best, but what it has been doing so far is mostly positive and applauded.

The consequences of the PRC's administrative litigation are readily observable, however restricted, not only in respect of the ruled and rulers in particular, but also in the wider context of the society and country at large.¹ In fact, this diverse range of consequences has been restated many times in different ways by the Chinese authority to justify its effort in establishing the institution, to trumpet the successfulness in improving its legal establishment and governance, and to recapture the legitimacy to continue its rule. For others, like the mainland scholars or individual members of the ruled, those consequences are equally affirmed but usually to demand further improvement of the implementation of administrative litigation and expanding the latter's scope of protection.

To members of the ruled, the most direct and immediate consequence of administrative litigation is the protection of their lawful rights and interests.² Despite a not very high success rate of around 20 per cent winning in litigation for members of the ruled, there were an accumulated 60,809 first hearing administrative cases over the past eight years of implementation from 1990 to 1997 where members of the ruled had their personal and property rights and interests protected against illegal infringement by administrative agents (see Table 3.5). A specific example quoted by a judicial official of the Supreme People's Administrative Litigation Court reported that over four thousand peasant households were relieved of RMB 667.8 millions of financial burden through 211 administrative cases in Sichuan province alone in 1993.³ The benefit of administrative litigation for individual members of the ruled may not be very great but that for their aggregate is obviously substantial.

In respect of the rulers, administrative litigation has direct and indirect consequences. Direct consequences refer to the immediate effects of administrative litigation during its process, i.e. correcting the rulers' illegal administrative acts and confirming those lawful ones. This is straightforward and needs no further elaboration. Indirect consequences refer to the preventive responses of the rulers to administrative litigation when they try to avoid being sued or losing in litigation.

Such indirect consequences are more subtle and less certain, but can be summed up mainly in four aspects.

Firstly, administrative litigation pushes the rulers to abide by and rule according to the laws both in terms of following the stipulations of substantive laws and observing the requirements of procedural codes.⁴ Failing in either one may result in their administrative acts being challenged and defeated on the ground of illegality in litigations. This helps reduce the endemic problems of “not following the laws; not enforcing the laws”, “rule according to administrative orders”, and “rule by man” in the PRC’s public administration.⁵

Secondly, administrative litigation enhances the rulers’ efficiency at work because their in-actions can be challenged under the Law (Article 11). With administrative litigation in place, the rulers will less likely delay, whether with purpose or by negligence, payment of pensions, issuance of permits and licenses, and performance of legal responsibility to protect personal and property rights of the citizens. This helps reduce the prevailing problems of red-type, slackness, corruption, and furthering private ends with public office among the Chinese administrative agents.⁶

Thirdly, administrative litigation helps improve the quality of the rulers' administration. To meet the challenge of administrative litigation, many individual members of the rulers have developed their own legal work teams to review and refine their respective administrative legislation work so as to consolidate the legal basis of their administration. Those work teams also serve to educate their operational colleagues on how to improve every day work so as to avoid unnecessary administrative disputes. On the other hand, the courts' verdicts and legal advice to concerned administrative agents during and after litigations also help the agents to improve their administrative legislation, law enforcement procedure and work system, thereby correcting weaknesses in their overall administration work.⁷

Fourthly, administrative litigation can also help strengthen the rulers' status. Administrative litigation is like a mirror and the kind of image projected, whether good or bad, depends on the object presented and not on the mirror. In many cases where the rulers had acted in accordance with the laws and regulations, and litigations were due to misunderstanding or misconception of the ruled, the results of litigations were the clarification of misunderstanding, affirmation of the lawful administrative acts, and strengthening of the rulers' governing status.⁸ From 1990 to 1997, there were an accumulated 65,331 first hearing administrative cases where the

rulers' administrative acts were affirmed (see Table 3.5). This was indeed more than the number of cases where the rulers lost their cases to the ruled and probably their "face" as well.

In terms of the society at large, administrative litigation helps promote social stability.⁹ Incidences of instability have occurred due to administrative disputes between the ruled and the rulers. Hundreds of peasants attacked local government offices because of the latter's excessive demands and collections. Large groups of urban dwellers surrounded the Lands Department in petition for local resettlement and more reasonable compensations on the eve of seeing their homes being pulled down. Thousands of deceived public debts holders flocked the streets demanding for return of their funds by responsible administrative agents. In the first five years of implementation, the PRC's administrative litigation had entertained and resolved nearly a thousand administrative cases involving multitudinous plaintiffs and group actions.¹⁰ In 1993, over 600 administrative cases concerning excessive demands and collections on rural peasants were heard in Hunan province alone.¹¹ Resolving these cases through an institutionalised procedure has helped resolve the conflicts between the ruled and rulers in an orderly manner, thereby avoided unnecessary violent confrontation as well as public demonstration in those circumstances, and in the end,

promoted social stability.

For the country as a whole, administrative litigation has also contributed to the overall economic, constitutional, legal, and political development in the PRC, not by offering substantive guarantees but by providing procedural remedies.¹²

Economically, administrative litigation helps correct and normalise vast areas of activity involving the state, like taxation, price regulation, development of the financial market, control of foreign exchange, management of numerous industrial and commercial businesses, protection and exploitation of natural resources, major construction and investment projects. It also helps promote the growth of economic enterprises by protecting their operational autonomy. Taken together, administrative litigation has contributed to the progress of economic reform, transformation of the economic structure, development of a market economy, and promotion of a better investment environment in the country.¹³

Constitutionally, administrative litigation further fulfills the promise of the PRC's constitution in Article 41, which allows the citizens to complain against state organs for violation of the law and dereliction of duty. In the past, the citizens can only do so through petitioning to the People's Congresses or higher levels state

bureaus. Now, a third alternative through the judiciary is provided. Thus, implementation of the constitution is further strengthened. Legally, administrative litigation represents a major progress in the legal system of the mainland. It not only completes the procedural set-up of the Chinese legal system but also enhances the awareness about rule of law in the society and promotes the practice of rule of law in the country.¹⁴ Politically, administrative litigation is an exemplification of the principle of people's dictatorship in terms of enhancing the people's scrutiny of the administrative authorities. It is an illustration of socialist democracy in the sense of requiring the rulers to respect the lawful rights of the ruled. On a more practical level, it is a reform of the previous ruled-rulers relationship by shifting the balance of power more away from the rulers towards the ruled, and a change in the power relationship between the state judiciary and administration by strengthening the former's supervision of the latter.¹⁵

The above wide range of consequences in respect of the ruled, the rulers, the society, and the country, are not separated but often inter-related. In many cases, they can be accomplished simultaneously, e.g. protecting citizens' rights, improving government's administration, harmonising the two's relationship, and promoting the idea of rule of law. However, some of the consequences are more immediate and

short-term, e.g. lawful rights of the ruled are protected and illegal acts of the rulers are corrected on a case by case basis. Whereas some others are more continuous and long-term, e.g. the idea of rule of law needs to be cultivated through the accumulated effects of many individual cases over a long period of time. Even so, the above consequences may not be realised or properly realised if administrative litigations are poorly handled and the courts' decisions are not fully enforced. In the end, the extent to which those consequences are achieved varies among cases and depends on many factors like the latitude and gravity for their accomplishment set by the provisions of the PRC's Administrative Litigation Law.

B. Fourth Diagnosis of the Administrative Litigation Law

Provisions in the Law is one of the sources where we can explore why and how the consequences of administrative litigation are affected. For example, we have seen earlier that setting multiple purposes for administrative litigation has spread the latter's benefits over both the ruled and rulers (see first diagnosis). Requiring the rulers to prove the legality of their administrative acts has reduced the burden of administrative litigation on the ruled (see second diagnosis). But restricting the width and depth of protection under administrative litigation has limited the latter's benefits

to the ruled (see third diagnosis). Indeed, the consequences of administrative litigation are confined and biased not only by these provisions but also by others like the last four chapters, i.e. chapter eight to eleven, of the Law. They do so by stipulating how and what members of the ruled and rulers are to be affected in administrative litigation. The related articles are diagnosed in the following.

Chapter eight of the Law, “Enforcement”, stipulates in two articles how the courts’ decisions are to be enforced on members of the ruled and rulers, but the provisions benefit and help the rulers more than the ruled. While both parties are required under the first article to perform the courts’ judgments and rulings, the victorious rulers are given the power to compel enforcement on the beaten ruled by themselves in accordance with the law without having to go through the courts (Article 65). On the contrary, victorious members of the ruled are not given that power but must apply to the courts for enforcement action if the defeated rulers refuse to comply. In case of any such application, it must be made no later than three months of the judgment unless the ruled has good reason for delay.¹⁶

The above may be explained as in accordance with the different positions of the ruled and rulers in the control of compelling authorities but the second article is

obviously inserted into the Law to provide extra benefits to the rulers. According to the article, if members of the ruled fail to perform certain administrative acts and fail to bring proceedings against those acts within the stated period, the concerned administrative agents not only can compel enforcement of those acts by themselves in accordance with the law but also can apply to the courts for compulsory enforcement (Article 66). By comparing the amount of first hearing administrative cases closed by the courts with the volume of enforcement application from administrative agents enforced by the courts, the latter had increased from slightly more than the former in 1990 when administrative litigation became effective to around three-times of the former in 1997 (see Table 5.1 below).

Table 5.1 First Hearing Administrative Cases and Applications for Enforcement by Administrative Authorities Handled by the People’s Courts of PRC, 1990-1997

	First Hearing Administrative Cases			Applications for Enforcement			Ratio
	Received (a)	Closed (b)	b’s Annual Increase	Received (c)	Enforced (d)	d’s Annual Increase	$\frac{d}{b}$
	Cases	Cases	%	Cases	Cases	%	
1990	13006	12040	--	18052*	15125*	--	1.26
1991	25667	25202	109.32	40863	37148	145.61	1.47
1992	27125	27116	7.59	65156*	62308*	67.73	2.30
1993	27911	27958	3.11	88971	88147	41.47	3.15
1994	35083	34567	23.64	136795	135355	53.56	3.92
1995	52596	51370	48.61	191258	188584	39.33	3.67
1996	79966	79537	54.83	256897	252545	33.92	3.18
1997	90557	88542	11.32	270133	264936	4.91	2.99

Source: Quoted and calculated* from statistics in Law Yearbook of China and Annual Work Report of the PRC Supreme People’s Courts, 1992-98

By virtue of the provision, the court has become more like an executive arm of the administration than being the guardian of citizens' rights and interests. In practice, the article is most commonly employed by the administration to solicit the courts' assistance in enforcing laws and regulations that have the greatest oppositions and difficulties in enforcement like the one-child policy.¹⁷ Strictly speaking, this article should not be included in the Law because it is outside the legal boundary of administrative litigation. But by extending the effect of the Law from enforcing the courts' rulings after litigation to enforcing the administration's decisions in the absence of litigation, it gives the rulers additional benefits not available to the ruled.

Chapter nine of the Law specifies in three articles the liability of the rulers to compensate for their infringement of the rights and interests of the ruled, but such liability is very much confined, whether in terms of the concerned government departments or the responsible government officials. By rigid stipulations, compensations are only payable when *actual damage* are caused to members of the ruled by illegal specific administrative acts of the rulers *with intent or by fault* and the amount payable only covers the *direct and occurred damage* (Article 67). Under such specification, compensations will not be payable in any of the following cases: if infringed rights or interests are not legally recognised; if damage is not or has not

been caused; if damage is caused by abstract administrative acts or by exempted or legal specific administrative acts; or if damage is not caused with intent or by fault.¹⁸

Not to mention the difficulty with establishing the responsible officials' intent or fault, infringed citizens even cannot apply directly to the courts for compensations but are required by the same article to approach the concerned government departments first for disposition. Litigation is allowed only when the latter's disposition of the request is found unacceptable or there is a parallel request for adjudicating the legality of the concerned specific administrative act. Such provision is certainly not to maximise the protection of administrative litigation to the ruled but to minimise the liability of the rulers under administrative litigation.

The above liability to compensate, in a very restricted extent, rests with the concerned government departments and not with the government officials responsible for performing the concerned administrative acts. Payments are made centrally through the respective finance departments, which will then reclaim the money from the concerned departments (Article 69). The responsible officials are liable to repay the departments part or all of the incurred compensations only if the officials have caused the damage *with intent or gross negligence* when performing the illegal specific administrative acts. In addition, the officials' liability is restricted

to cash payment and not other kind of punishment under the Law (Article 68). Such provision is quoted as an useful mechanism to achieve one of the consequences of administrative litigation, i.e. to improve the quality of administration work of government officials by requiring the latter to share the responsibility for their administrative acts.¹⁹ However, the effectiveness of such a mechanism is questionable because according to the Law, the responsible officials will not be punished for unintended or simple (as compared to gross) negligent acts, they are not required to bear the legal responsibilities for their intended or gross negligent acts, and in any case, their performance appraisal and career advancement may not be affected.²⁰

Chapter ten of the Law contains four articles which stipulate that foreigners, stateless persons and foreign organisations pursuing litigation in the PRC are basically treated as the same as their local Chinese counterparts and hence are subject to the same restrictions, except with two peculiarities. In general, they are equally governed by the Law under the principle of territoriality, unless otherwise stated in the law, e.g. diplomatic exemption (Article 70). They have to follow the same rigid procedure, enjoy the same confined rights, and shoulder the same harsh obligations stipulated in the Law (Article 71). They have to employ local PRC's registered

lawyers and not foreign ones if they need representation (Article 73). They have to employ and pay for translation if they do not understand Chinese, because litigations will be conducted in Chinese. The first peculiarity is that they are subject to the principle of reciprocity in treatment, i.e. the same limitations or benefits that their home countries, if any, impose on Chinese citizens and organisations will be equally applied on them. The second peculiarity is that they can claim the protection of those international treaties that are recognised or adhered to by the PRC (Article 72).

Finally, the last chapter of the Law contains two supplementary provisions on how and when administrative litigation under the Law will become effective. According to the first article, complaining members of the ruled are required to pay the appropriate amounts of case acceptance fee before their cases can be accepted and their requests for relief processed. There are three categories of fee based on nature of the cases: RMB 5-30 for cases belonging to the category of public security, RMB 50-400 for cases on monopoly right, and RMB 30-100 (about 2.25-7.48 pounds) for the others.²¹ If they win the cases, such fees can be reclaimed from the defeated rulers. In the end, the losing party or parties bear the litigation costs including the case acceptance fee, case document photocopying charges, evaluation and inspection fees, and compensations to witnesses, etc (Article 74). According to

the second article, the ruled can only seek redress under the Law on or after October 1, 1990. As for specific details concerning the process of litigation where insufficient or no provision is given in the Law, e.g. calculation of some of the legally prescribed time period and delivery methods of legal documents, respective provisions in the PRC's Civil Procedure Law will apply.²²

To sum up, the last four chapters of the Law contain vivid examples of how the provisions of the Law can affect the latitude and gravity for the accomplishment of the consequences of administrative litigation. By clear specifications, the rulers' interests are fully protected, their liabilities are very much confined, whereas benefits to the ruled, whether Chinese or foreigners, are not particularly honoured. Indeed, the overall tendency of the stipulations in the Law is to reduce the adverse effects of administrative litigation on the rulers as far as possible while trying to provide relief to the ruled.

C. Evaluational Orientation of the Surveyed Individual Household Proprietors

In respect of the above discussed consequences, six questions were asked of the 738 individual household proprietors to explore how they evaluate the consequences

of the PRC's administrative litigation and to identify the evaluational orientation of their administrative litigation culture (see Table 5.2 for the questions). The results are presented and discussed below in the same way as that for the previous three orientations.

1. Overall Level and Pattern of the Proprietors' Evaluational Orientation

The overwhelming majority of the proprietors concurred that establishing administrative litigation would bring positive consequences, especially for the society at large and individual citizens in particular. As many as 95.1 per cent of them agreed that setting up administrative litigation could help strengthen the protection of citizens' legal rights and interests and a comparable 94.4 per cent believed that the idea of rule of law in the society would be strengthened (see Table 5.2 below). The proprietors were relatively less affirmative concerning the effects of administrative litigation on the government but still, 93.2 per cent of them perceived that with administrative litigation in place, the government would be pressurised to act according to the laws, 88.5 per cent thought that the cases of abusing authority by the government and its officials would be reduced, 82.7 per cent reckoned the government would operate more efficiently, and 71.8 per cent expected that the

government’s status would be strengthened.

Table 5.2 Responses of the Proprietors to the Six Evaluational Orientation Questions

		A	N	D	?	s.d.
19	Strengthen the protection of legal rights and interests of citizens.	q 695 % 95.1	16 2.2	11 1.5	9 1.2	0.65
20	Push the government to work according to the laws.	q 678 % 93.2	29 4.0	12 1.6	9 1.2	0.66
21	Strengthen the idea of rule of law in the society.	q 686 % 94.4	28 3.9	7 0.9	6 0.8	0.61
22	Reduce the cases of abusing authority by government and its officials.	q 643 % 88.5	38 5.2	27 3.7	19 2.6	0.78
23	Increase the government’s efficiency at work.	q 602 % 82.7	63 8.6	21 2.9	42 5.8	0.75
24	Strengthen the government’s status.	q 522 % 71.8	80 11.0	78 10.7	47 6.5	0.98

A = Totally agree and agree; N = Neutral; D = Totally disagree and disagree;
? = Don’t know; s.d. = Standard deviation; q = Frequency.
“Don’t know” and “missing value” not included in the calculation of standard deviation.

As a redress institution, administrative litigation is largely remedial and correctional by nature. Its immediate effects centre on correcting administrative impropriety and protecting citizens’ rights and interests. Other consequences suggested in the questions are certainly possible and related but would be more indirect and may involve other intervening factors. The above results seem to reflect on one hand such a *de facto* difference among the various consequences and on the other hand a ruled-oriented perspective in the proprietors’ evaluational orientation. They were most prepared to speak for themselves and in a broader sense, for the

society that they made up. When asked to comment on the institution’s impact on the government, they became more disagreeing and uncertain. The reason might be that they were not in the position to judge or might as well be the inherent limitation of administrative litigation just mentioned. As a correctional measure, the institution at most can only restrict the rulers to abide by the laws, hopefully with less misuse of power, but by itself may not be enough to turn them into good Samaritans. It is reasonable to find lower levels of concurrence among the proprietors on the less certain positive effects of administrative litigation on the rulers.

As a whole, the evaluational orientations of the proprietors were very much alike, with a very low standard deviations of 0.61 to 0.98 and their overall evaluation of administrative litigation was very positive and certain, with an average of 87.6 per cent endorsing the consequences and only 3.6 per cent holding the opposite view (see Table 5.3 below).

Table 5.3 Overall Evaluational Orientation Scores of the Proprietors

		A	N	D	?
Overall Evaluational Orientation	tq	3826	254	156	132
	aq	637.7	42.3	26.0	22.0
	%	87.6	5.8	3.6	3.0

A = Totally agree and agree;
? = Don’t know;

N = Neutral;
tq = Total Frequency;

D = Totally disagree and disagree;
aq = Average Frequency.

2. Internal Relationship of the Proprietors’ Evaluational Orientation

According to the results of Spearman’s rho correlation analysis, the proprietors’ evaluational orientation was the second one to have a perfect internal correlation with answers to the six evaluational orientation questions all mutually correlated. This indicated that the proprietors had a highly consistent and cohesive evaluational orientation in their administrative litigation culture. However, the overall level of correlation was not as high in this orientation as in the jurisdictional orientation, average evaluational orientation rho coefficient was 0.60 whereas average jurisdictional orientation rho coefficient was 0.63 (see Table 5.4 below).

Table 5.4 Spearman’s rho Correlation Coefficients for the Internal Relationship of the Proprietors’ Evaluational Orientation

Q	19	20	21	22	23	24
19		.77	.68	.63	.52	.35
20	.77		.76	.71	.63	.42
21	.68	.76		.72	.66	.49
22	.63	.71	.72		.68	.47
23	.52	.63	.66	.68		.57
24	.35	.42	.49	.47	.57	

Row highest in shade, average rho coefficient = 0.60.

Significance level at .05, 2-tailed.

In addition, the correlation coefficients decreased consecutively from the first to

the last evaluational orientation question, reflecting the decreasing confidence of the proprietors towards consequences listed further down the list. Answers to the first two questions about strengthening protection of citizens’ rights and pressurising the government to follow the laws had the highest rho correlation coefficients of 0.77 whereas answers to the last question on strengthening the government’s status had the lowest rho correlation coefficients of 0.35 with answers to the first question.

3. External Relationship of the Proprietors’ Evaluational Orientation

As discussed in the last three chapters, the evaluational orientation of the proprietors was slightly correlated with their cognitive orientation, affective orientation, and very strongly with their jurisdictional orientation. On the other hand, little correlation was found with their appraisal orientation, but a perfect relationship was found with their expectational orientation (see Table 5.5 below).

Table 5.5 External Relationship of the Proprietors’ Evaluational Orientation

Orientation	Relationship
Cognitive	Slight
Affective	Slight
Jurisdictional	Very strong
Appraisal	Small
Expectational	Perfect

To reiterate, the proprietors’ evaluational orientation answers were significantly related with their answers to cognitive orientation questions 4 and 5, and affective orientation questions 8 and 10 (see Table 5.6 below). Knowledge about the Law, support for establishing administrative litigation and care about the latters’ implementation could all be relevant to and a basis for the proprietors to develop a clearer and more affirmative evaluation of the institution. However, the overall evaluational orientation of the proprietors did not correlate with all or most of their cognitive and affective orientations answers, thereby restricting their overall relationship.

Table 5.6 Correlation Coefficients for the External Relationship of the Proprietors’ Evaluational Orientation

	Cognitive Orientation					Affective Orientation						Jurisdictional Orientation								Appraisal Orientation								Expectational Orientation				
Q	1	2	3	4	5	6	7	8	9	10	11	12	13	14	15	16	17	18	25	26	27	28	29	30	31	32	33	34	35	36	37	
19	15			13	14		10	13		11		17	11	09	15			08										42	40	38	08	23
20				15	13			08		10		15	12	09	14			08										40	41	38	11	29
21				19	16			08		11		10	13	13	17	13	11	08							10			43	41	42	16	29
22				17				10		08		12	13	12	16	10	14	16							10			40	39	37	14	24
23				14	16					08		08		12	09	10	10	13	08						08	08		39	36	39	19	24
24					15							09	16	20	19	18	14	13		10	10	08			17	10	13	33	29	37	27	27

Phi correlation for Q1-5, rho for others, phi & rho coefficients at 2 decimal points.
Significance level at .05, 2-tailed, negative in shade.

The proprietors’ evaluational and jurisdictional orientations towards

administrative litigation were very strongly correlated. Although the level of correlation was not very strong, with rho coefficients from only 0.08 to 0.20, statistically significant correlations were found between answers to most questions of the two orientations (see Table 5.6 above). In particular, answers to three evaluational orientation questions were entirely correlated with answers to all seven jurisdictional orientation questions and the other three with at least five. The proprietors' judgment on the effects of administrative litigation was found to be tied with their jurisdictional idea about the scope of protection for the institution.

Little correlation was found between the proprietors' answers to the evaluational and appraisal orientations questions, except for appraisal orientation question 30. It appears that their evaluation of the institution's effect is not very much related with their assessment of the institution's usefulness.

Last but not the least, a perfect relationship was found between the proprietors' evaluational and expectational orientations with quite strong Spearman's rho correlation coefficients from 0.08 to 0.42. As mentioned in the last chapter, jurisdictional idea, evaluation and expectation in respect of the institution were related, probably in consequential order, and that relationship could be very strong or

at times reaching a perfect correlation. There seemed to be a sequence from conceived scope of jurisdiction, to projected resulting effects, and then to estimated likely prospects. Although there might be other factors as well affecting the proprietors' evaluation and then expectation, that consequential relationship should not be overlooked. An additional point to mention, answers to expectational orientation question 36 about the condition for further development rather than likely prospects of the institution was least correlated with the proprietors' evaluational orientation answers, with rho coefficients of only 0.08-0.27.

4. Evaluational Orientation among Different Sub-Groups of Proprietors

Different personal particulars of the proprietors were found to have different level of relationship with the proprietors' evaluational orientation based on cross-tabulation analysis (see Table 5.7 below, details of the extensive cross-tabulation results are not displayed due to space constraints).

Table 5.7 Relationship between the Proprietors’ Evaluational Orientation and Personal Particulars

Level of Relationship	Personal Particulars
Insignificant	Gender Kind of Business Residency Working District
Slightly Significant	Age Working Years Income
Significant	Political Status Education Level

Sub-Groups with Insignificant Relationship

With very similar cross-tabulation findings, the four personal particulars of gender, kind of business, residency, and working district were all found to have little relationship with the proprietors’ evaluational orientation towards administrative litigation. Different sub-groups under all four personal particulars tended to share the above-mentioned general level and pattern of evaluational orientation in very much the same way with no significant deviation. Percentage differences in answers of various sub-groups under the four personal particulars were very low, especially for the first three evaluational orientation questions (from less than one per cent to three per cent), and only became higher for the last question about strengthening government’s status (6-13 per cent). Similarity in answers was highest under the personal particular of gender, followed by working district, then residency, and lastly

kind of business. The average percentage difference in agreeing and disagreeing answers together in all six evaluational orientation questions for the four personal particulars was 3.9 per cent, 5.1 per cent, 6.6 per cent and 7.3 per cent, respectively. Such cross-tabulation findings of little relationships were supported by the corresponding phi and Cramer’s V correlation analyses, where only the personal particular of working district had slightly significant correlation coefficients of 0.11 to 0.13 (see Table 5.8 below).

Table 5.8 Correlation Coefficients for the Proprietors’ Evaluational Orientation and Personal Particulars

Evaluational Orientation Question	Gender	Age	Political Status	Working Years	Kind of Business	Residency	Working District	Income	Education Level
19							.11		
20				.09			.11		
21				.11			.12		.09
22				.09	.11				
23		.10	.11	.15					.09
24		.16		.17		.16	.13		.08

Phi for gender & residency, Spearman’s rho for age, working years, income & education level.
Cramer’s V for political status, kind of business & working district.
Significance level at .05, 2-tailed, negative in shade.

Sub-Groups with Slightly Significant Relationship

By means of cross-tabulation, an overall direct and positive relationship was

discernible between the proprietors' age and evaluation of administrative litigation, especially in respect of the last two evaluational orientation questions on positive effects of the institution on the government. However, that relationship was not very strong. As a whole, proprietors of higher age were more likely to evaluate the institution more favourably. This was particularly true for the age sub-group of over 60, which had the highest percentage of affirmative answers in all evaluational orientation questions and in fact 100 per cent in four. Older proprietors also had greater confidence in the institution's positive effects on the government than younger ones. Correlation analysis by Spearman's rho showed slightly significant association between age and answers to the last two evaluational orientation questions with rho coefficients of -0.10 and -0.16 (see Table 5.8 above).

By the same token, working years, a personal particular closely tied with age, was also found to have a slightly significant relationship with the proprietors' evaluational orientation towards administrative litigation, only that the relationship was less direct but more detectable. Spearman's rho correlation coefficients revealed a significant correlation of -0.09 to -0.17 between this personal particular and answers to all evaluational orientation questions except the first one (see Table 5.8 above). Evaluational orientation towards administrative litigation generally became

more favourable for proprietors with more years in the job, but a small U-turn was observed for the sub-group with 7-10 working years in the first four evaluational orientation questions about the direct correctional effects of administrative litigation. That modest zigzag relationship was not found in the last two questions about the positive effects of the institution on the government. This was in line with the above discussion on age that older proprietors would more likely say yes to the last two evaluational orientation questions.

The majority of the proprietors had income below RMB1,000. Among this majority group of proprietors, their evaluational orientation tended to become more positive with more income. Those with the lowest income of below RMB301 had the least positive evaluation and most unknown answers. Evaluational orientation became more positive for the next sub-group of RMB301-600, and further more for those of RMB601-1,000. Those with income higher than RMB1,000 belonged to the minority whose limited sub-group size might contain the risk of scores being affected by special cases. Probably so, it was found that their evaluational orientation scores were more fluctuating, going down first for the next two income sub-groups of RMB1,001-1,500 and 1,501-2,500, then rebounding for those with RMB2,501-4,000 to a level even higher than the majority sub-group, and finally retreated for the

highest income sub-group of over RMB4,000 though still higher than the lowest income sub-group in most cases. To conclude, there was a basically positive relationship between income and evaluational orientation for the majority of proprietors but a parallel relationship was not obvious for those who could earn significantly higher income but were much smaller in number. The Spearman's rho correlation failed to identify a significant association (see Table 5.8 above).

Sub-Groups with Significant Relationship

Different political sub-groups were found to have their own distinct evaluational orientation not like the others. For those with Communist Party membership, they had the most certain and consistent response plus the most favourable evaluational orientation. They had the highest percentage of affirmative answers in all evaluational orientation questions. Affiliation with the ruling political party seems to be associated with support and endorsement of the rulers' policy even among members of the ruled. On the contrary, proprietors belonging to the Communist Youth League were most uncertain in their response, with relatively more neutral and unknown answers, and least favourable in their evaluational orientation, as shown in their relatively higher percentage of opposing answers. Age may be an important intervening factor for this group since they tend to be much younger and younger

proprietors tend to have more opposing answers as mentioned above. Independent proprietors were more middle-of-the-road, with evaluational orientation scores mostly between the two extremes. Hence, the absence of affiliation with the ruling party does not necessarily mean more opposing view on the effects of administrative litigation, only perhaps more freedom in the holding of views. Democratic parties proprietors were not compared because there were not sufficient cases for comparison.

A consistent zigzag relationship was found between the proprietors' education level and their evaluational orientation. Evaluational orientation scores started off fairly high with the first sub-group of primary education only, then went down a bit when moving onto the next sub-group with lower secondary education, but increased with each higher level thereafter from upper secondary to post-secondary until for the last sub-group of undergraduate and above where scores slid down to the lowest among all sub-groups. It seemed that those with little education would rather easily agree with the suggested effects of administrative litigation though they also had relatively higher percentage of unknown answers. At the opposite end, elite education seemed to produce a more skeptical mind among the respondents, leading them to have much more reservation about the impacts of the institution. Yet, if the

two extremes were taken away, a basically positive relationship could be found between education and evaluational orientation among the proprietors. Spearman's rho correlation analysis confirmed the significant association between education and answers to three of the six evaluational orientation questions with rho coefficients between -0.08 to -0.09 (see Table 5.8 above).

In summary, given the overall level and pattern of evaluational orientation among the sampled ruled were very consistent and positive, especially for the first four evaluational orientation question on the correctional effects of administrative litigation, variation among their sub-groups according to their personal particulars was uncommon. In fact, gender difference was almost non-existent and the kind of business, residency and working district all possessed little bearing on their evaluational orientation though a distinct orientation pattern could still be found under each of these personal particulars. Seniority in terms of both age and working years did have a slightly positive relationship with the proprietors' evaluational orientation, so as increase in their monthly income. After all, political and educational background were the two personal particulars having a significant relationship with the sampled ruled's evaluational orientation towards administrative litigation. Yet, both were not simple direct linear relationships, but quite distinctive

and winding, confirming the weak effect of most personal particulars on the evaluational orientation pattern of the sampled ruled.

D. Evaluational Orientation of the Surveyed Government Officials

1. Overall Level and Pattern of the Officials' Evaluational Orientation

Overall evaluational orientation scores of the officials about administrative litigation were comparable to those of the proprietors but with a quite different orientation pattern (see Table 5.9 below). For the officials, the most commonly agreed consequence of administrative litigation was the collective effect of promoting the idea of rule of law in the society, which had the highest 96.6 per cent of affirmative answers. Next was in relation to their work - 96.0 per cent affirmed that administrative litigation could push the government to act according to the laws and 95.4 per cent said it could reduce abuse of power by the authority. Protecting citizens' rights was only their fourth consensus with 94.1 per cent agreeing it as one of the consequences. As for the two less immediate positive effects of administrative litigation on the government's operation efficiency and status, the officials were even less confident in the former than the proprietors, with only 75.6 per cent having that

faith while more or less the same as the proprietors regarding the latter, with the lowest 73.1 per cent of acquiescence.

Table 5.9 Responses of the Officials to the Six Evaluational Orientation Questions

			A	N	D	?	s.d.
19	Strengthen the protection of legal rights and interests of citizens.	q	143	4	3	2	0.67
		%	94.1	2.6	2.0	1.3	
20	Push the government to work according to the laws.	q	146	5	1	0	0.61
		%	96.0	3.3	0.7	0.0	
21	Strengthen the idea of rule of law in the society.	q	147	1	3	1	0.63
		%	96.6	0.7	2.0	0.7	
22	Reduce the cases of abusing authority by government and its officials.	q	145	6	1	0	0.61
		%	95.4	3.9	0.7	0.0	
23	Increase the government's efficiency at work.	q	115	25	11	1	0.89
		%	75.6	16.5	7.2	0.7	
24	Strengthen the government's status.	q	111	23	16	2	0.97
		%	73.1	15.1	10.5	1.3	

A = Totally agree and agree; N = Neutral; D = Totally disagree and disagree;
 ? = Don't know; s.d. = Standard deviation; q = Frequency.
 "Don't know" and "missing value" not included in the calculation of standard deviation.

When comparing the officials' answers to the first four evaluational orientation questions on the direct consequences of administrative litigation with that of the proprietors, it was found that the officials projected a ruler-centred inclination as opposed to the proprietors' ruled-oriented perspective. For the officials, possible impact of administrative litigation on their work attracted more of their assent than the effect on protecting citizens' rights. Such a dichotomy might be due to the two parties' role difference and yet might as well reflect the difference in the way they

evaluate the institution.

The average central tendency of the officials’ responses in this orientation was as high as that of the proprietors, with standard deviations averaged at 0.73, ranging from as small as 0.61 to 0.97. Their overall evaluational orientation scores were also similar, 88.5 per cent endorsement compared to 3.8 per cent opposition (see Table 5.10 below).

Table 5.10 Overall Evaluational Orientation Scores of the Officials

		A	N	D	?
Overall Evaluational Orientation	tq	807	64	35	6
	aq	134.5	10.7	5.8	1.0
	%	88.5	7.0	3.8	0.7

A = Totally agree and agree; N = Neutral; D = Totally disagree and disagree;
? = Don’t know; tq = Total Frequency; aq = Average Frequency.

2. Internal Relationship of the Officials’ Evaluational Orientation

A perfect correlation was also witnessed in the officials’ evaluational orientation (see Table 5.11 below). Their answers to all six evaluational orientation questions proved to be mutually related. In addition, the level of internal correlation was very high, with Spearman’s rho correlation coefficients from 0.48 to 0.88, which

were higher than that of the proprietors or the level of internal correlation found in the officials’ jurisdictional orientation.

Table 5.11 Spearman’s rho Correlation Coefficients for the Internal Relationship of the Officials’ Evaluational Orientation

Q	19	20	21	22	23	24
19		.85	.85	.67	.48	.52
20	.85		.88	.77	.53	.54
21	.85	.88		.78	.57	.53
22	.67	.77	.78		.64	.58
23	.48	.53	.57	.64		.74
24	.52	.54	.53	.58	.74	

Row highest in shade, average rho coefficient = 0.66.

Significance level at .05, 2-tailed.

The trend of diminishing correlation among answers from the first to the last evaluational orientation question reported by the proprietors was not found among the officials. But the latter did display a significantly stronger internal relationship among their answers to the first three questions, while as a group answers to the first three questions were least associated with answers to the last two questions concerning the institution’s less direct effects on improving the government’s efficiency and status. After all, the officials were found to have a highly consistent and cohesive evaluational orientation in their administrative litigation culture.

3. External Relationship of the Officials’ Evaluational Orientation

The external relationship of the officials’ evaluational orientation was measured by correlation analysis and the results were summarised in Table 5.12 below.

Table 5.12 External Relationship of the Officials’ Evaluational Orientation

Orientation	Relationship
Cognitive	Small
Affective	Fairly strong
Jurisdictional	Very strong
Appraisal	Small
Expectational	Perfect

In quite a similar way, the officials’ evaluational orientation was found to have no significant relationship with their cognitive and appraisal orientations. The officials’ evaluational orientation answers were only occasionally related with their answers to cognitive orientation questions 2 and 5, as well as appraisal orientation questions 25, 30 and 32. The frequency and intensity of correlation were also not very high, with Spearman’s rho correlation coefficients from 0.25 to 0.48 for relationship with cognitive orientation and 0.17 to 0.29 for relationship with appraisal orientation (see Table 5.13 below). In a nutshell, the officials’ evaluational orientation towards administrative litigation appeared to be quite dissociated and

independent from their cognitive and appraisal orientations towards the same.

Table 5.13 Correlation Coefficients for the External Relationship of the Officials’ Evaluational Orientation

	Cognitive Orientation					Affective Orientation						Jurisdictional Orientation						Appraisal Orientation								Expectational Orientation					
Q	1	2	3	4	5	6	7	8	9	10	11	12	13	14	15	16	17	18	25	26	27	28	29	30	31	32	33	34	35	36	37
19		48		32	29	37	20	17		33		39	35	28	36	16		26	24			17		18		17	47	53	49	22	46
20						36	22	17		30		33	37	30	32	25		29	24			17		17			45	51	42	29	47
21		28			30	34	16			25		40	43	37	37	23		31	26								46	47	43	35	47
22	25	33				35	17	16	17			43	50	41	37	37	17	39	29					17			32	38	39	29	38
23					28	35					17	28	29	24	27	28		29	20							18	35	29	23	22	25
24	29					25	23	20		20		29	32	30	38	30	19	29								25	35	27	22	22	26

Phi correlation for Q1-5, rho for others, phi & rho coefficients at 2 decimal points.

Significance level at .05, 2-tailed, negative in shade.

On the other hand, their evaluational orientation responses were significantly correlated with their answers to four of the six affective orientation questions, with Spearman’s rho correlation coefficients from -0.16 to -0.37. It suggested that those officials who accepted citizens using administrative litigation for redress purposes, regarded the institution as suitable for China, supported its establishment, and cared about its implementation, were also likely to have a more positive evaluation of the institution’s likely effects. The officials’ affective bearing towards administrative litigation appeared to have a certain degree of significance to their evaluation of the institution.

How far the officials perceived the scope of jurisdiction for administrative litigation was found to be significantly related with how far they perceived the latter's effects. Their answers to six of the seven jurisdictional orientation questions, except question 17 concerning the abstract administrative act of unreasonable regulation, were perfectly correlated with their answers to all of the six evaluational orientation questions. The respective Spearman's rho correlation coefficients extended from 0.16 to 0.50. In view of the fact that jurisdictional orientation question 17 was the least agreed by the officials, it could be confidently concluded that the officials' jurisdictional and evaluational orientations towards administrative litigation were very strongly related. In fact, as mentioned in chapter 4, when the officials agreed with the circumstances listed in the jurisdictional orientation questions as reasonable scope of judicial review, they would readily ascertain the likely effects of the institution on both the ruled and ruler.

Achieving a level of perfection even stronger than that of the proprietors, the officials' answers to all six evaluational orientation questions were found to be entirely correlated with their responses to all five expectational orientation questions and the latter's Spearman's rho correlation coefficients were even higher, from 0.22 to 0.53. Although the two parties were at the two ends of administrative litigation,

both seemed to have a total connection between their respective evaluation of and expectation for the institution, though their reasons might be different. The proprietors' faith in the institution might be simple wishful thinking of the ruled or genuine bona fides of the laymen. The officials' endorsement of the institution might also imply a clear vision of the rulers or sheer ritual of repeating the official statement. Anyway, a perfect connection between the respondents' evaluational and expectational orientations towards administrative litigation was statistically proven beyond doubt.

4. Evaluational Orientation among Different Sub-Groups of Officials

Based on the results from cross-tabulation and correlation analysis, the officials' evaluational orientation is found to have very little relationship with their personal particulars. The results are summarised in Tables 5.14 and 5.15 below (details of the extensive cross-tabulation results are not displayed due to space constraints).

Table 5.14 Relationship between the Officials’ Evaluational Orientation and Personal Particulars

Level of Relationship	Personal Particulars
Insignificant	Gender Age Political Status Working Years Department Income Education Level
Slightly Significant	Working District

Table 5.15 Correlation Coefficients for the Officials’ Evaluational Orientation and Personal Particulars

Evaluational Orientation Question	Gender	Age	Political Status	Working Years	Department	Working District	Income	Education Level
19								
20								
21								
22								
23								.18
24								

Phi for gender, Spearman’s rho for age, working years, income & education level.

Cramer’s V for political status, department & working district.

Significance level at .05, 2-tailed.

Sub-Groups with Insignificant Relationship

The evaluational orientation of the officials might be related with their other orientations but it was certainly not too well associated with their personal particulars.

Almost all of the personal particulars, except working district, were found to have little relationship with, not to mention impact on, the officials' evaluational orientation towards administrative litigation.

The first three personal particulars of gender, age and political status, were basically unrelated to the officials' evaluational orientation. Sub-groups under these three personal particulars responded very similarly, without major differences, and mainly along the average trend of the officials' overall evaluational orientation. The next two personal particulars of working years and department generated more varying answers among their sub-groups but the scores were mostly randomly distributed, meaning that a consistent pattern of relationship were improbable. The last two personal particulars of income and education level also showed no substantial connection with the officials' evaluational orientation because answers of the sub-groups under both personal particulars were similar, with evaluational orientation scores randomly distributed as well.

Sub-Group with Slightly Significant Relationship

Working district was the only personal particular found to have a slightly significant relationship with the officials' evaluational orientation. Cramer's V

correlation coefficients for this personal particular gave no significant findings but cross-tabulation showed that officials of Xuan Wu district were most confident in the immediate effects of the institution listed in the first four evaluational orientation questions whereas Xi Cheng officials were least so. As for the last two evaluational orientation questions about improving the government's efficiency and status, answers of Xi Cheng officials were contradictory, with the highest percentage of both agreeing and disagreeing whereas Hai Dian and Xuan Wu officials were relatively more neutral. Such a pattern of evaluational orientation was pretty consistent, suggesting a noticeable relationship between working district and evaluational orientation of the officials. As in the cases of cognitive and affective orientations, Xuan Wu district officials had higher evaluational orientation scores than their colleagues in Xi Cheng and Hai Dian districts, probably because of their being older in age and tie with the Communist Party or because of the specific ruled-rulers relationship in this traditional old district of the capital city.

In summary, the cognitive, affective, and jurisdictional orientations of the officials all showed a certain degree of relationship with their personal particulars, like age, working years, working district, income, and education level. Evaluational orientation was the first orientation of the officials found to have no significant

relationship with those mentioned or other personal particulars. It suggested that the overall level and pattern of evaluational orientation found among the officials were commonly shared among the rulers sample and individual background of the respondents was not important.

E. Summary

The consequences of administrative litigation in the PRC, related articles in the Law, and the evaluational orientations of the ruled and rulers samples have been reported and discussed in this chapter. It is undeniable that the PRC's administrative litigation has brought many positive effects whether to the ruled and rulers in particular or to the society and country at large. However, it is equally obvious that those consequences are confined and biased by rigid stipulations in the Law. While administrative litigation is expected to provide relief to the ruled, the rulers are well protected against challenge of the institution since the early stage of designing and writing up the Law.

In respect of the fourth research question, i.e. how the Chinese ruled and rulers evaluate the consequences of the PRC's administrative litigation, it is found that both

parties equally acclaim and agree with the consequences. However, they are clearly more concerned with those effects that have more direct relationship with their own interests. A perfect internal relationship is found in both samples' evaluational orientation, confirming the complementary nature of different consequences of administrative litigation and a highly consistent evaluational orientation in the two parties' administrative litigation culture.

Besides, evaluational orientation is found not very significantly related with cognitive and affective orientations but very strongly with jurisdictional and expectational orientations in the administrative litigation culture of both sample groups. Conceived scope of jurisdiction, projected resulting consequences, and estimated future prospects for administrative litigation are believed to have a consequential relationship disrespect of the respondents' different status.

In addition, the evaluational orientation of the sampled ruled is to some extent related with and possibly affected by their personal particulars like age, working years, income, political status and education level. On the contrary, the evaluational orientation of the sampled rulers is much less affected by their personal background. This suggests some other differences besides the above-mentioned self-interest

inclination behind the commonly positive and coherent evaluational orientation in both sample groups' administrative litigation culture.

After all, it is not difficult for both the ruled and rulers samples to understand and agree with the potential effects of administrative litigation and hence, develop a highly positive evaluational orientation towards the institution in their respective administrative litigation culture. However, their highly affirmative evaluational orientation scores do not necessarily mean that the institution has been highly successful in achieving those effects. The reality may fall short of the ideal. That relates with the next research question of this paper, i.e. how useful the institution is, and the next administrative litigation orientation of the concerned parties, i.e. the appraisal orientation.

Chapter 6 Appraisal Orientation and the Usefulness of Administrative Litigation in the PRC

Using administrative litigation to protect the lawful rights and interests of the ruled and to compel the rulers to rule according to the law will turn out to be no more than an empty promise if at the end of the day, administrative litigation is not used by members of the ruled. The preceding four chapters have shown that, to a varying extent, the surveyed ruled do realise the existence of administrative litigation as a redress channel, support its establishment in the mainland, endorse its scope of protection and review, as well as agree with its potential positive consequences. However, if they finally decide not to use it due to various reasons even when their rights are infringed by illegal administrative acts of the rulers, all the efforts and promises made when establishing administrative litigation will be in vain. That relates to the appraisal orientation of the ruled. This chapter focuses on reporting and discussing the appraisal orientation of the ruled and rulers samples. But firstly the usefulness of administrative litigation in the PRC and related provisions in the PRC's Administrative Litigation Law will be briefly discussed and diagnosed to provide the necessary contextual background.

A. Usefulness of Administrative Litigation in the PRC

Appraisal orientation, as mentioned in the theoretical framework, refers to the comments of affected parties on the usefulness of administrative litigation. How useful do they find administrative litigation compared with other problem solving methods, how far do they trust the courts as an arbitrator in administrative litigation, and how difficult do they regard the use of administrative litigation are questions to be explored when measuring appraisal orientation. Members of the ruled may decide not to use administrative litigation even when there is a need if they believe there are other better alternatives, the courts cannot help, or administrative litigation is exceedingly difficult to use. Under such circumstances, the perceived usefulness as well as actual usage of administrative litigation will be very much undermined.

In fact, administrative litigation is not and has not been the only channel or a long-accepted method to redress administrative disputes in the mainland. On the contrary, well before the setting up of administrative litigation, there have already been other established methods used by the ruled to resolve their disputes with the rulers. Petitioning to the higher level bureaus for administrative reconsideration and using personal connection or money are just some of the most common formal and

informal methods.

Administrative reconsideration originates from the long-established system of writing to and visiting (*xinfang* 信訪) party-state organs to provide war-time needed intelligence, present request of all kinds, and not the least, complain against illegality and irregularity of the authorities and their personnel. *Xinfang* emerged in the *Jinggangshan* period of 1920s and was later strengthened by Mao's mass line policy. It further expanded in the *Yanan* period of 1930s and was formally institutionalised after founding of the republic. Complaints against the authorities and their officials received through *xinfang* will be related to supervisory or appropriate administrative organs for internal reconsideration. Several pieces of the early republic's laws and regulations in the 1950s already carried provisions allowing the citizens to apply for administrative reconsideration.¹ During the period of rapid economic reform in the 1980s, the number raised to over a hundred. After the establishment of the PRC's administrative litigation in 1989, the system of administrative reconsideration was also reconstructed by the administration, resulting in the promulgation of the Regulations on Administrative Reconsideration by the State Council on 24 December 1990. The boundary of administrative reconsideration was then expanded beyond individual laws and regulations to cover

all specific administrative acts similar to the earlier established administrative litigation.

Administrative reconsideration resembles administrative litigation in many respects, differs in some others, but above all is designated by the laws to occupy a superior position above administrative litigation. As for their similarities, both institutions are designed to help settle administrative disputes between the ruled and rulers, alleviate tensions in the two's relationship, protect the ruled's rights, and regulate the rulers' acts. As for their differences, administrative reconsideration has the additional advantages of lower costs, quicker results, less procedures, fewer formalities, larger scope of review (including the reasonableness of administrative acts), and more powerful jurisdiction (ordering direct changes of administrative acts). Besides, administrative reconsideration is designated as a compulsory preceding step before taking administrative litigation according to many administrative rules and regulations and this is recognised in the PRC's Administrative Litigation Law. The administration is therefore given a vantage point to resolve many administrative disputes internally first, thereby eliminating the need to appear later in court as a defendant.

However, the major disadvantage with administrative reconsideration is the irremovable shade of favouritism and partiality. “Government officials protecting one another” (官官相護) has long been and is still a common deficiency with Chinese officialdom. In those circumstances, administrative reconsideration will only protect the rulers’ interests rather than the interests of the ruled. Hence, it may not be the most preferred redress channel for the ruled. Though with similar objectives and functions, administrative reconsideration cannot replace administrative litigation but given its preceding position and other advantages, it is still a competitive alternative.

The other two informal means of using personal connection (*guanxi*) and money to resolve administrative disputes in the Chinese context are very much related and similar, both in terms of their nature and popularity. According to White, both can be classified as corruption, only that the latter belongs to a class A corruption (palpably illegal and illegitimate) and is known as bribery, while the former belongs to a class C corruption (having highly ambiguous popular perceptions) and is a pervasive societal phenomenon in the Chinese community.²

Using *guanxi* to get things done does not start with the PRC nor does it cater

for resolving ruled-rulers disputes only. The use of *guanxi* among Chinese can be traced back to the imperial years and can be distinguished in the achievement of political goals, the moderation of economic activities, the maintenance of social order, the fostering of community solidarity, and above all, the management of conflict.³ When applied in the resolution of administrative disputes, *guanxi* can be sufficiently translated as personal connection. It does not need to be “a commonality of shared identification”⁴ or “personal bonds of acquaintanceship and mutual belonging,”⁵ nor does it require the investment of *ganqing* (affective component) to building a close *guanxi*,⁶ though it may work better in those circumstances. For the resolution of disputes, as distinct from the building of solidarity, it suffices to have simply the connection, whether directly or indirectly, with the appropriate officials for the soliciting of favours to settle the disputes in question. One aphorism from the imperial past states the point: “All things become easy if you know someone in the government (or imperial court)” (朝中有人好辦事).

The use of *guanxi* is very much reinforced in the PRC as a natural consequence of a political system where rule by man prevails. A proactive approach is to develop a good connection with supervising officials directly, usually by offering favours first, whether in money or in kind. Those officials will then become friendly and feel

obliged to return favours when required. *Guanxi* then becomes a “defensive mechanism” as Christiansen and Rai name it.⁷ The passive approach is to look for help when trouble has happened by finding someone who can solicit favours from those concerned officials. The former approach is preventive but costly. The latter is remedial and can be equally costly. Depending on the kind of disputes, there can be many types of favours to be asked of the rulers, e.g. performing or not performing some acts, exercising or not exercising certain powers, upholding or not upholding some decisions, and observing or not observing certain time limits. As a result, punishment can be reduced, inspection waived, license issued, troubles removed, needs fulfilled, and disputes settled. Although informal by nature and perhaps involving illegal practices, the use of *guanxi* can be very effective in practice, at least in the present cultural and political setting of the mainland. Hence, *guanxi* is a good substitute for administrative litigation.

Using money, or giving bribes, is another alternative. Due to strong push and pull factors, it is commonly used by the ruled and those powerless to get things done in the mainland, not just for resolving administrative disputes but also for conducting many other lawful and unlawful activities.⁸ When used to settle administrative disputes, it is invariably for the ruled to offer money, mostly in cash

but it can also be in kind, to members of the rulers for getting around the problems in dispute. It is especially common for the settling of disputes over minor administrative acts concerning the exercise of discretionary authorities, e.g. general administrative punishments by law enforcing officials and processing of applications for the issuance of permits and licenses of all kinds. Offering a certain sum of money personally to the concerned officials can reduce the amount of fines, shorten the period of detention, whether of person or property, and speed up the process of application. Although administrative litigation can also help in those circumstances, the solution is often too late and too costly when compared with the use of money at the spot. In addition, money can be used together with *guanxi*, like a double dose of lubricant, for more effective resolution of disputes. Comparable to *guanxi*, money is also a common, though very much illegal, substitute for administrative litigation in the PRC.

Besides the availability of alternatives, how the ruled assess the courts as arbitrator and a source of help will also affect the former's overall appraisal and ultimate use of administrative litigation. The difficulties and inadequacies of the Chinese courts in handling administrative litigation has been discussed in chapter three and will not be repeated here. In summary, the lack of judicial independence

will cause the potential users to suspect that the courts will defend the administration in similar way as those supervisory administrative agents in administrative reconsideration. Besides, the lack of judiciary status in the mainland's political system and in the country as a whole will also lead the potential users to worry that the courts' verdicts will not be binding on the administration and cannot be enforced. Given such weaknesses of the court in administrative litigation, the latter would not be regarded as helpful and useful as it is proposed or expected.

Finally, the ruled will refrain from using administrative litigation if the latter is regarded as exceedingly difficult to use. There are many concrete situations where the ruled may find the use of administrative litigation difficult and a few examples can be given. For the two hundred million illiterate and uneducated members of the ruled in the PRC, filing their cases with the courts, defending their legal rights and interests in open debates, and presenting their requests against challenges of the rulers, could all be too demanding if not impossible. For the eight hundred million peasants living in the rural villages, pursuing administrative litigation could be very irksome and costly in terms of both time and money because those basic level people's courts with the jurisdiction to accept their cases may be tens or hundreds of miles away in the county cities.⁹ In fact, the more remote their place of living is, the

more difficult their resort to the use of administrative litigation will be, though not necessarily the less serious their rights are being infringed. For the thirty million individual household proprietors and many other breadwinners who need to work almost everyday to make a living, taking the trouble and spending the time to sue the rulers may just be too expansive and formidable. Finally, for all members of the ruled, who are subject to continuous administration of one kind or other, the costs of suing the rulers in terms of upsetting their relationship with their immediate governors and turning the latter into their enemies are just too high. The threat of retaliatory actions by the concerned authorities and their officials is always prominent and sufficient to deter attempts to sue the rulers. In short, putting administrative litigation into practice by members of the ruled is indeed much more difficult than putting administrative litigation into place by the rulers.

B. Fifth Diagnosis of the Administrative Litigation Law

This is the last but not the least diagnosis of the Law. Two remaining chapters of the Law – chapter 3 about jurisdiction of the courts and chapter 6 about bringing and hearing of cases, are diagnosed here because they relate with two of the issues discussed above, i.e. positions of the courts and administrative reconsideration in

administrative litigation. They account for the difficult position of the courts and the superior position of administrative reconsideration in administrative litigation.

With no intention to create separate independent courts for hearing administrative litigation, elevate the judiciary's status above the administration, or alter the existing judicial establishment, the eleven articles in chapter 3 of the Law simply place administrative litigation in the existing judicial system, starting from the lowest basic-level people's courts. The eleven articles lay down clearly how the first hearings of administrative litigation cases are to be distributed among courts of different levels and locations. In essence, except certain complex cases or cases concerning administrative acts of provincial and above level governments, first hearings of all administrative cases will be conducted by the lowest basic-level people's courts in the places where the administrative acts are performed or where the defendants or plaintiffs are located.

It is claimed that such arrangement is to make it more convenient and less costly for the ruled to pursue litigation for protecting their rights and interests. However, that supposed benefit is in fact less explicit than the resulting problem of placing the courts in a difficult position. Very often, the courts are under the

administrative jurisdiction of the defendants who are mostly local administrative authorities, and the presiding judges may also be inferior in rank than the defendants' representatives. This will make it very difficult for the courts and their judges to hear the cases impartially and execute their verdicts forcefully so as to protect the rights and interests of the ruled. Under such an awkward institutional arrangement, the practical usefulness of administrative litigation to the ruled are unavoidably reduced.

On the other hand, while laying down the rules for the bringing and hearing of administrative litigation cases in six articles, chapter six of the Law operates to protect the interests of the administration and to reduce the cases of administrative litigation by endorsing the preceding position of administrative reconsideration to administrative litigation. Its first article states that administrative disputes must go through administrative reconsideration first before moving onto administrative litigation where and when that is required by the laws and regulations. Where and when that is not required, the article also encourages members of the ruled to consider applying for administrative reconsideration first before bringing their cases to the courts.

In fact, it was proposed when the Law was being drafted that administrative reconsideration should be set as the compulsory preceding step for taking administrative litigation in all cases. The proposal was dropped only because the PRC's administrative reconsideration was not well developed enough by then. Following promulgation of the Law, administrative reconsideration has been expanded and reconstructed, which then become very much comparable to administrative litigation in both jurisdiction and function. A subsequent explanatory note issued by the Supreme People's Court also helps explain in details how the superior position of administrative reconsideration is to be honoured.¹⁰ Taken together, the usefulness of administrative litigation is to a certain extent eroded by the strengthening of administrative reconsideration.

C. Appraisal Orientation of the Surveyed Individual Household Proprietors

In connection with the above discussed issues, eight questions were asked of the surveyed individual household proprietors to measure their appraisal of the usefulness of administrative litigation and to identify the appraisal orientation of their administrative litigation culture (see Table 6.1 for the questions). The first three questions compare the usefulness of administrative litigation with three other

problems solving methods. The next three questions concern the courts' position in administrative litigation. The last two questions are about how difficult the use of administrative litigation is. The results are presented and discussed below.

1. Overall Level and Pattern of the Proprietors' Appraisal Orientation

Unlike results in the previous orientations, appraisal scores of the proprietors are much less positive and agreeing. Their answers are quite mixed, spreading across both ends of the spectrum, and a lot more neutral and uncertain answers are recorded. It seems that although they welcome administrative litigation, support its purposes, and agree with its potential benefits, they do find it not specifically useful at the present moment in the reality of the PRC.

When asked to compare administrative litigation with other problems solving mechanisms, the proprietors' responses were quite negative. Only 37.7 per cent of the proprietors believed using administrative litigation was more useful than petitioning to higher levels of the government for reconsideration, whereas 26.6 per cent believed in the opposite, and 19.3 per cent regarded the two methods as similar in their usefulness (see Table 6.1 below). A slightly higher percentage of 41.7 per

cent believed taking administrative litigation was more useful than using personal connection, but a comparable 39 per cent thought the other way round, and 14 per cent were indifferent between the two. Finally, an equal amount of 39 per cent believed in the problems resolving power of taking administrative litigation and using money whereas 16.7 per cent were neutral between the two. Such diversity in the proprietors' answers to these three questions produced standard deviations from 1.06 to 1.27, reflecting measurable polarity in their appraisal comments on the relative usefulness of administrative litigation against the other three problems solving measures. Yet, it was particularly worrying when significantly more of the proprietors, as members of the ruled, indirectly insinuated that the two unofficial methods of using money and personal connection were even more useful and hence, more likely to be used, than the long-established official channel of petitioning for administrative reconsideration.

Table 6.1 Responses of the Proprietors to the Eight Appraisal Orientation Questions

			A	N	D	?	s.d.
25	Petitioning to higher levels of the government can better solve the problem than suing the government in court.	q	192	139	272	118	1.06
		%	26.6	19.3	37.7	16.4	
26	Using personal connection can better solve the problem than suing the government in court.	q	281	101	301	38	1.23
		%	39.0	14.0	41.7	5.3	
27	Using money can better solve the problem than suing the government in court.	q	281	120	281	38	1.27
		%	39.0	16.7	39.0	5.3	
28	Courts cannot fairly hear cases of administrative litigation initiated by citizens.	q	153	182	313	74	1.06
		%	21.2	25.2	43.4	10.2	
29	Courts will defend the administration.	q	201	171	245	99	1.12
		%	28.0	23.9	34.3	13.8	
30	Courts' verdicts cannot bind the administration.	q	162	136	297	123	1.08
		%	22.5	19.0	41.4	17.1	
31	Citizens do not dare to sue the government for fear of revenge by the officials.	q	455	95	148	25	1.16
		%	62.9	13.1	20.5	3.5	
32	It is very difficult to put administrative litigation into practice.	q	338	131	175	79	1.03
		%	46.7	18.1	24.3	10.9	

A = Totally agree and agree; N = Neutral; D = Totally disagree and disagree;
? = Don't know; s.d. = Standard deviation; q = Frequency.
"Don't know" and "missing value" not included in the calculation of standard deviation.

Concerning the judiciary's position in administrative litigation, the proprietors also displayed certain hesitancies and reservations. Although their comments on the courts were still more positive than negative, the former was only a weak majority. In particular, there were 43.4 against 21.1 per cent who believed the courts could hear cases of administrative litigation fairly, whereas 25.2 per cent were not sure and 10.2 per cent didn't know. There were 34.3 against 28 per cent who trusted that the courts would not defend the administration, but 23.9 per cent were not so sure and

13.8 per cent could not tell. Lastly, there were 41.4 against 22.5 per cent who opined that the courts' verdicts were binding on the administration, yet 19 per cent were not sure and 17.1 per cent didn't know. Standard deviations of 1.06-1.12 were recorded from answers of the proprietors to these three questions, suggesting quite diverse appraisal comments here as well. As arbitrator in the process of litigation, the court's independence and impartiality will not only affect people's respect for and trust in the litigation institution, but also people's reliance on and usage of the latter. The hesitant view of the proprietors in respect of the courts' position in administrative litigation implies that the support for and the value placed upon administrative litigation among the proprietors is not matched with comparable trust in the helpfulness and usefulness of the institution.

In principle, administrative litigation can bring a wide range of potential benefits to the ruled as well as the rulers (see the evaluational comments in last chapter), but when put into practice in the reality together with the many empirical considerations and other competing alternatives, its actual benefits and usefulness may be reduced. As a matter of fact, as many as 62.9 per cent of the proprietors proclaimed that the ruled dared not sue the government for fear of revenge. In their last remark, the majority of the ruled sample claimed that it was very difficult to put

administrative litigation into practice. Those having such view almost doubled the amount of those with the opposing view (46.7 per cent against 24.3 per cent).

In aggregate, the overall appraisal orientation scores of the proprietors indicate a high degree of disagreement and low level of confidence concerning the usefulness of administrative litigation. On average, the vote of non-confidence was even slightly higher than the vote of confidence (35.8 against 35.3 per cent) and almost one fifth was vote of indifference (see Table 6.2 below). While the proprietors’ highly positive evaluational orientation scores reported in last chapter clearly confirms their belief in the potential value of administrative litigation in principle, their much weaker appraisal orientation scores revealed here strongly indicate their doubts about the usefulness of administrative litigation in practice. Their answers signal the need for improvements in the institutional arrangements and procedural implementation of administrative litigation in the PRC.

Table 6.2 Overall Appraisal Orientation Scores of the Proprietors

		A	N	D	?
Overall Appraisal Orientation	tq	2063	1075	2032	594
	aq	257.9	134.4	254.0	74.3
	%	35.8	18.6	35.3	10.3

A = Totally agree and agree;
? = Don't know;

N = Neutral;
tq = Total Frequency;

D = Totally disagree and disagree;
aq = Average Frequency.

2. Internal Relationship of the Proprietors' Appraisal Orientation

The proprietors' appraisal orientation towards administrative litigation is the third one besides jurisdictional and evaluational orientations to have a perfect internal relationship, indicating a coherent and consistent appraisal orientation in the proprietors' administrative litigation culture. However, the degree of internal relationship was significantly lower than that of the other two orientations, probably because of the greater range of questions asked and the more diverse answers in return. The full range of significant Spearman's rho correlation coefficients for the proprietors' appraisal orientation responses varied from 0.17 to 0.75 (see Table 6.3 below) and the average rho coefficient was 0.38, much lower than 0.63 and 0.60 of the jurisdictional and evaluational orientations, respectively. Yet, the rho coefficients for answers to certain appraisal orientation questions were much higher than the orientation average, signifying particular responses with stronger relationships deserving explanations.

Table 6.3 Spearman’s rho Correlation Coefficients for the Internal Relationship of the Proprietors’ Appraisal Orientation

Q	25	26	27	28	29	30	31	32
25		.28	.25	.27	.28	.30	.17	.20
26	.28		.75	.43	.44	.39	.47	.35
27	.25	.75		.50	.43	.37	.51	.32
28	.27	.43	.50		.55	.45	.36	.32
29	.28	.44	.43	.55		.55	.41	.37
30	.30	.39	.37	.45	.55		.31	.34
31	.17	.47	.51	.36	.41	.31		.34
32	.20	.35	.32	.32	.37	.34	.34	

Row highest in shade, average rho coefficient = 0.38.

Significance level at .05, 2-tailed.

The strongest internal relationships were found among the proprietors’ responses to two groups of appraisal orientation questions on the usefulness of administrative litigation. The first one concerns the courts’ position in administrative litigation with an average correlation coefficient of 0.52. The second one concerns the comparative usefulness of administrative litigation against the other three problems solving methods with an average correlation coefficient of 0.43. These indicate first and foremost the importance of the courts to successful implementation of administrative litigation in the view of the ruled, and to lesser extent, the real challenge of competing alternatives, especially those informal ones, to the relative usefulness of administrative litigation in the calculation of the ruled. The results also suggest that the proprietors’ appraisals in those two respects are not random but

consistent comments reflecting their genuine beliefs.

3. External Relationship of the Proprietors’ Appraisal Orientation

The external relationship of the proprietors’ appraisal orientation is not as strong as the above internal relationship but is not weak either. A very strong relationship was recorded with the jurisdictional and expectational orientations, a fairly strong relationship was identified with the cognitive and affective orientations, and evaluational orientation was the only one found to have little relationship with the proprietors’ appraisal orientation (see Table 6.4 below).

Table 6.4 External Relationship of the Proprietors’ Appraisal Orientation

Orientation	Relationship
Cognitive	Fairly Strong
Affective	Fairly Strong
Jurisdictional	Very Strong
Evaluational	Small
Expectational	Very Strong

The proprietors’ appraisal orientation answers, except that of question 25 about petitioning to higher levels government for administrative reconsideration, were significantly related with all their jurisdictional orientation answers according to the

computed Spearman’s rho correlation coefficients (see Table 6.5 below). The lowest external correlation coefficients from 0.08 to 0.20 were detected from answers to the three appraisal questions that compared administrative litigation with other three problems solving methods. It implies that the perceived or written scope of protection for administrative litigation, however comprehensive, might not have too much practical significance, especially if other alternatives were regarded as more useful in the real world. The highest correlation coefficients of 0.12 to 0.30 rested with answers to appraisal question 32 about difficulty with putting administrative litigation into practice. From a pragmatic point of view, the more responsibilities the proprietors assign to administrative litigation, the more difficulty they expect with its use.

Table 6.5 Correlation Coefficients for the External Relationship of the Proprietors’ Appraisal Orientation

	Cognitive Orientation					Affective Orientation						Jurisdictional Orientation								Evaluational Orientation						Expectational Orientation				
Q	1	2	3	4	5	6	7	8	9	10	11	12	13	14	15	16	17	18	19	20	21	22	23	24	33	34	35	36	37	
25	15	19		21		12	10						08	13	12	11	09						08		08	11	15	25	15	
26	13	20		14		09	14			09	13	20	16	14	18	12	14	13						10	09	11	16	19	11	
27	17	23		16		09	18			10	15	20	16	12	14	11	15	15						10			10	17	09	
28		15	12	19			17	07		11	12	20	20	19	21	20	20	22						08			11	25	16	
29	14	17	15	17			18			08	11	20	21	19	22	19	20	19							14	13	18	31	19	
30	15	23		23		08	22	08		08	11	22	20	22	20	16	22	15			10	10	08	17	14	15	18	29	15	
31	18	20							09		11	19	17	12	13	13	12	16					08	10	12	12	14	22	14	
32	15	15		26			15			08	12	30	25	26	27	26	26	22						13	15	14	20	29	16	

Phi correlation for Q1-5, rho for others, phi & rho coefficients at 2 decimal points.
Significance level at .05, 2-tailed, negative in shade.

The proprietors' appraisal orientation answers were also significantly correlated with all their expectational orientation answers as shown by their correlation coefficients, except that of question 27 about using money as an alternative and question 28 about the fairness of the courts in hearing administrative litigation cases. The correlation coefficients ranged from 0.08 to 0.31 and the highest were recorded from answers to questions about the courts' position in litigation. As a whole, the perceived usefulness of administrative litigation is closely linked with the expected future for the latter in the view of the ruled sample, especially the courts' position and performance which is a major practical concern of the ruled.

The appraisal orientation of the proprietors related fairly strongly with both their cognitive and affective orientations, with average correlation coefficients of 0.18 and 0.12, respectively. Coincidentally, the proprietors' appraisal orientation answers related more closely with their answers to an equal number of three questions in both the cognitive and affective orientations. As for the cognitive orientation, they were questions 1, 2, and 4 about awareness of the institution and the Law. As for the affective orientation, they were questions 7, 10, and 11 about suitability of administrative litigation for China, caring about its implementation, and keenness to get acquainted with it. Taken together, it tends to suggest that the

cognitive base of the proprietors' appraisal comments on the usefulness of administrative litigation is only a general awareness of the institution instead of detailed understanding and the affective support is mainly their acceptance of and caring about the same.

As mentioned in the last chapter, no significant correlation was found between the proprietors' evaluational and appraisal orientations towards administrative litigation, except for their answers to appraisal question 30 about the binding force of the court's decision on the administration (rho coefficients 0.08 to 0.17). However low the correlation may be, the more results the proprietors expect administrative litigation to achieve, the greater worry they feel about actualisation of the courts' decision.

4. Appraisal Orientation among Different Sub-Groups of Proprietors

Detailed analysis of the proprietors' responses by means of cross-tabulation shows that the proprietors' personal particulars have a different level of relationship with their appraisal orientation (see Table 6.6 below, details of the extensive cross-tabulation results are not displayed due to space constraints).

Table 6.6 Relationship between the Proprietors’ Appraisal Orientation and Personal Particulars

Level of Relationship	Personal Particulars
Insignificant	Income Education Level
Slightly Significant	Political Status Working Years Kind of Business
Significant	Gender Age Residency Working District

Sub-Groups with Insignificant Relationship

Income and education level of the proprietors were found to have little relationship with their appraisal orientation towards administrative litigation. All sub-groups under the two personal particulars basically followed the above-mentioned overall level and pattern of appraisal orientation for the proprietors as a whole, except with slight variations on the three controversial issues of using personal connection, using money, and courts defending the administration. The Spearman’s rho correlation analysis on these two personal particulars did not produce many significant findings (see Table 6.7 below).

Table 6.7 Correlation Coefficients for the Proprietors’ Appraisal Orientation and Personal Particulars

Appraisal Orientation Question	Gender	Age	Political Status	Working Years	Kind of Business	Residency	Working District	Income	Education Level
25	.14	.16	.12	.13		.14	.12		
26	.13	.21	.12	.14		.27	.13	.08	.10
27	.13	.21	.13	.13		.26	.18		
28		.16	.11	.10		.27		.11	.14
29	.15	.20	.13	.11		.21	.14		.09
30	.13	.23	.12	.16		.23			.12
31	.14	.18		.09		.19	.15		
32	.13	.19		.13	.12	.22	.12	.09	

Phi for gender & residency, Spearman’s rho for age, working years, income & education level.

Cramer’s V for political status, kind of business & working district.

Significance level at .05, 2-tailed, negative in shade.

Sub-Groups with Slightly Significant Relationship

The political status of the proprietors was found to have a slightly significant relationship with their appraisal orientation and each sub-group responded quite differently in connection with their different political background and exposure. Proprietors belonging to the Communist Party, who possessed official political status and tended to be politically more mature and sensitive, were found to have greater disbelief and doubt about administrative litigation in practice, especially when it concerned the administration. This sub-group had the highest percentage who said that internal administrative reconsideration by the administration could do better than administrative litigation by the courts, that the courts would not adjudicate

administrative litigation fairly but would most likely defend the administration and their verdicts would not be binding on the latter, that the ruled dared not challenge the rulers for fear of revenge, and that putting administrative litigation into practice was after all not easy.

On the contrary, their juniors in the Communist Youth League, who tended to be younger and politically less mature, saw the institution from the opposite pole. They had the highest percentage who argued that money could not compare with administrative litigation, that the courts would not defend the administration but would hear administrative litigation pleas fairly with verdicts binding on the administration, that the citizens would not avoid litigation because of possible revenge from officials, and that the institution was after all not that difficult to put into practice.

Lastly, those independent proprietors without political affiliation were more moderate but they had the highest percentage among all sub-groups who stated that both personal connection and money could do better than administrative litigation. Such appraisal idea constituted only the minority for the previous two sub-groups but was the majority for this independent sub-group of proprietors. By correlation

analysis, the proprietors' political status was found to have a significant relationship with their appraisal comments in respect of the relative usefulness of administrative litigation in comparison with the other three methods and the courts' position in litigation. The respective Cramer's V correlation coefficients ranged from 0.11 to 0.13 (see Table 6.7 above).

Working years of the proprietors also exhibited a slightly significant relationship with their appraisal orientation, which was negative and fairly direct. In particular, proprietors with longer years in the job tended to be more negative with administrative litigation than those with shorter. The veteran sub-group with over ten years of service was comparatively most against the institution, with the highest percentage agreeing with all eight negative statements in this orientation. On the contrary, new entrants, especially those with less than 3 years as proprietors, had relatively stronger affirmative appraisal about administrative litigation, upholding its usefulness on the practical level. Spearman's rho correlation analysis also indicated a significant correlation between working years and all appraisal orientation responses, with coefficients between -0.09 and -0.16 (see Table 6.7 above).

The relationship between the proprietors' appraisal orientation towards

administrative litigation and the type of their business was just slightly significant because tangible difference was found with only one of the sub-groups, i.e. those in the repairing business. The other three sub-groups in retailing, catering and servicing businesses shared very similar appraisal orientations like that of the entire proprietors sample mentioned above. The repairing proprietors, who tended to be older and less educated, displayed distinctly more negative appraisal than the other three sub-groups as shown by their having the highest percentage of negative scores in all the eight appraisal orientation questions. In particular, those repairing proprietors commented that using personal connection and money were much better, and to lesser extent, administrative reconsideration as well, than taking litigation in resolving problems. It seems that those informal and to certain extent illegal means for settling administrative disputes are more popular with older members of the ruled who are mostly in the repairing business and with less education. Due to such a limited relationship, the Cramer's V correlation analysis for this personal particular could not identify much in the way of significant findings (see Table 6.7 above).

Sub-Groups with Significant Relationship

For the first time, gender was found to have a significant relationship with the proprietors' administrative litigation orientation. A consistent difference was observed in the appraisal orientation of the two genders and the phi correlation coefficients also testified significant findings of 0.13 to 0.15 (see Table 6.7 above). On the whole, male proprietors tended to have more reservations and a negative appraisal of administrative litigation, with a higher percentage of admission to all negative appraisal orientation questions. Yet, the females might not have significantly better appraisal, as they tended to have more unknown or neutral answers, suggesting a general uncertain tendency in the female's appraisal orientation. In particular, significantly more males complained about the courts defending the administration in administrative litigation, verdicts of the former not binding on the latter, administrative litigation not comparable to administrative reconsideration, the ruled not daring to sue for fear of revenge, and actual difficulty with putting administrative litigation into practice. After all, male proprietors appeared to be more assertive and critical in their appraisal orientation towards administrative litigation than their female counterparts.

The proprietors' appraisal orientation was also found to have a significant

relationship with their age. By cross-tabulation, that relationship was non-linear and not very consistent, especially for the negative appraisal. At the two ends of the curvilinear relationship, both younger and older proprietors tended to have a more positive appraisal of administrative litigation. Those younger proprietors had the least doubt about the usefulness of administrative litigation. They had the highest percentage who argued that administrative litigation was better than all three other suggested alternatives, that the courts would not defend the administration and their verdicts were binding, that fear for revenge might not be a problem for the pursuit of litigation, and that putting administrative litigation into practice was not that difficult. At the other end, the older proprietors had the highest percentage who claimed that the courts would be fair in their adjudication.

On the contrary, those middle-aged proprietors, especially those between 41 to 50, tended to have a more negative appraisal orientation, with a comparatively higher percentage of agreeing with the negative appraisal orientation statements, displaying relatively more disapproval and reservation with the institution on the practical level (more than half of the 41 to 50 sub-group believed using personal connection and money were better than taking litigation). The Spearman's rho correlation analysis also indicated a significant association between age and all

appraisal responses with coefficients from -0.16 to -0.23 (see Table 6.7 above).

Proprietors with and without local Beijing residency differed significantly in their appraisal orientation towards administrative litigation. Those with residency had a lower regard for the entire institution than those without, with more agreements with all eight negative appraisal orientation statements. The majority of the residents sub-group regarded that putting administrative litigation into practice was difficult and one major reason was possible revenge by the officials, hence, using personal connection and money were much better in practice to resolve problems.

On the contrary, proprietors without residency were much more optimistic about administrative litigation in practice. The majority of them expressed trust in the courts and regarded administrative litigation as better than all three other problems solving methods. Yet, the majority of them still worried about possible revenge by the officials in particular and difficulty with the practice of administrative litigation in general. The phi correlation coefficients also confirmed a significant correlation of 0.14 to 0.27 between the proprietors' residency status and answers to the eight appraisal orientation questions (see Table 6.7 above).

Proprietors working in different districts also responded very differently to the appraisal orientation questions, suggesting a significant influence of that personal particular on their appraisal orientation. Xuan Wu district proprietors who tended to be older males with less education, had more negative overall appraisal comments, with the highest percentage who agreed with all eight negative appraisal orientation statements. On the other hand, Hai Dian district proprietors who tended to be younger and better educated, had a more positive overall appraisal, with the highest percentage who disagreed with all the eight negative appraisal orientation statements. Finally, Xi Cheng district proprietors who had relatively more females, had scores between that of the other two district sub-groups, with relatively more neutral and unknown answers. The above significant relationship was supported by the Cramer's V correlation analysis for working district, with coefficients from 0.12 to 0.18 (see Table 6.7 above).

In summary, those proprietors who are younger would tend to have more positive appraisal comments on the usefulness of administrative litigation, so as those who have just entered the career, are working in Hai Dian district, and do not have local residency. In contrast, those proprietors who are older would tend to have more negative comments, so as those who are males, Party members, local residents,

and working in Xuan Wu district. On the whole, generational background and work experiences accumulated over the years seems to be important to the appraisal orientation of the ruled sample towards the relative usefulness of administrative litigation in practice.

D. Appraisal Orientation of the Surveyed Government Officials

The same eight appraisal orientation questions were asked of the 152 interviewed officials to explore how they appraise the usefulness of administrative litigation and to find out if they hold a different appraisal orientation than that of the proprietors. The officials' responses are presented and discussed below in the same way as that of the proprietors' above, plus a comparison between the two.

1. Overall Level and Pattern of the Officials' Appraisal Orientation

Probably because of their official status, eagerness to defend the state-launched institution of administrative litigation, inclination to gloss over the latter's limitations, tendency to understate the supremacy of the administration vis-à-vis the judiciary, and instinct to underreport the seriousness of retaliation by the rulers after

being sued, the officials' answers to all appraisal orientation questions are consistently more on the positive side. Administrative litigation appears to be empirically much more useful and practically less difficult in the words of the officials.

When asked to compare administrative litigation with the other three alternatives, administrative litigation was reported as more useful by the majority of the officials, with a percentage much higher than the proprietors. According to the officials' responses, administrative litigation compared most favourably to money, with a concurring percentage of 56.6 per cent, then to administrative reconsideration, with 52.7 per cent in support, and least favourably to *guanxi*, with only 48.6 per cent saying so (see Table 6.8 below). Conversely, 15.1 and 19.1 per cent of the officials admitted that administrative litigation was not as useful as administrative reconsideration and money, respectively, and *guanxi* was proclaimed to be more useful than administrative litigation by as many as 26 per cent. The admission of such informal means of using *guanxi* as more useful than taking administrative litigation among a quarter of the officials gives grounds for concern. In addition, the much higher percentage of neutral answers among the officials to these three questions as compared to the proprietors also deserves attention. For example, more

than one fifth compared administrative litigation as more or less equal to the two unofficial means of using *guanxi* and money when used to resolve administrative disputes. Taken into consideration the officials' tendency to gloss over the limitations of administrative litigation in their answers, their appraisal comments may not be very different from the proprietors' in that administrative litigation is not particularly useful and appealing when other powerful alternatives are available.

Table 6.8 Responses of the Officials to the Eight Appraisal Orientation Questions

			A	N	D	?	s.d.
25	Petitioning to higher levels of the government can better solve the problem than suing the government in court.	q	23	40	80	9	0.87
		%	15.1	26.3	52.7	5.9	
26	Using personal connection can better solve the problem than suing the government in court.	q	39	31	73	7	1.08
		%	26.0	20.7	48.6	4.7	
27	Using money can better solve the problem than suing the government in court.	q	29	34	86	3	1.02
		%	19.1	22.3	56.6	2.0	
28	Courts cannot fairly hear cases of administrative litigation initiated by citizens.	q	14	41	90	7	0.85
		%	9.2	27.0	59.2	4.6	
29	Courts will defend the administration.	q	22	34	93	3	0.94
		%	14.4	22.4	61.2	2.0	
30	Courts' verdicts cannot bind the administration.	q	16	23	111	1	0.84
		%	10.6	15.2	73.5	0.7	
31	Citizens do not dare to sue the government for fear of revenge by the officials.	q	66	28	56	2	1.12
		%	43.4	18.4	36.9	1.3	
32	It is very difficult to put administrative litigation into practice.	q	46	32	74	0	1.04
		%	30.3	21.1	48.6	0.0	

A = Totally agree and agree;

N = Neutral;

D = Totally disagree and disagree;

? = Don't know;

s.d. = Standard deviation;

q = Frequency.

"Don't know" and "missing value" not included in the calculation of standard deviation.

With a greater majority, the officials denied any cover-up by the judiciary and proclaimed that the courts had ultimate authority in administrative litigation. In particular, 59.2 per cent of the officials said the courts would hear administrative litigation impartially, 61.2 per cent said the courts would not defend the administration, and as high as 73.5 per cent said the courts' verdicts bound the administration (see Table 6.8 above). However, the extent of the opposite view deserves concern. Given their official status, still 9.2 per cent of them did not believe in judicial fairness, as many as 14.4 per cent admitted defense by the courts, and up to 10.6 per cent did not respect verdicts of the courts. Furthermore, the number of officials with a neutral view was comparable to that of the proprietors, from 15.2 per cent up to 27 per cent, showing a lot of reservations even among the officials about the courts' ruling position in administrative litigation.

Furthermore, as many as 30.3 per cent of the officials agreed that administrative litigation was difficult to use. Worse still, 43.4 per cent openly confessed that citizens did not dare to sue the government because of fear for revenge by concerned officials as compared to only 36.9 per cent with the opposite view (see Table 6.8 above). The appraisal orientation question about possible revenge preventing pursuit of litigation is the only question to have the majority of

officials in support. Although the percentage of officials agreeing with the use of administrative litigation as difficult is significantly lower than that of the proprietors, their admission of difficulty with administrative litigation should not be taken lightly. After all, the denunciation that administrative litigation may be useful in principle but not in practice can be equally found in the officials' answers as in the proprietors'.

In aggregate, the officials' overall appraisal comments on the usefulness of administrative litigation was significantly more positive than that of the proprietors, with 54.7 per cent in support of the institution's usefulness as compared to 21.0 per cent with the opposite view (see Table 6.9 below). Despite that, in view of the different position of the ruled and rulers in administrative litigation, appraisal comments of the officials at best can only reflect the rulers' views and wishes. It is after all the appraisal comments of the proprietors that determine how far they, as potential users, will rely on and make use of administrative litigation in reality.

Table 6.9 Overall Appraisal Orientation Scores of the Officials

		A	N	D	?
Overall Appraisal Orientation	tq	255	263	663	32
	aq	31.9	32.9	82.9	4.0
	%	21.0	21.7	54.7	2.6

A = Totally agree and agree; N = Neutral; D = Totally disagree and disagree;
 ? = Don't know; tq = Total Frequency; aq = Average Frequency.

2. Internal Relationship of the Officials’ Appraisal Orientation

The internal relationship of the officials’ appraisal orientation is very much like that of the proprietors, approaching perfect like that of the proprietors but missing mutual correlation in one case, i.e. between answers to questions 25 and 31 (see Table 6.10 below). Yet, the level of internal relationship in the officials’ appraisal orientation was stronger than that of the proprietors, with Spearman’s rho correlation coefficients from 0.22 to 0.75, averaged at 0.42, slightly higher than the proprietors’ average of 0.38.

Table 6.10 Spearman’s rho Correlation Coefficients for the Internal Relationship of the Officials’ Appraisal Orientation

Q	25	26	27	28	29	30	31	32
25		.39	.35	.31	.25	.30		.31
26	.39		.75	.46	.39	.35	.34	.41
27	.35	.75		.57	.59	.51	.45	.44
28	.31	.46	.57		.66	.49	.38	.30
29	.25	.39	.59	.66		.64	.57	.28
30	.30	.35	.51	.49	.64		.44	.32
31		.34	.45	.38	.57	.44		.22
32	.31	.41	.44	.30	.28	.32	.22	

Row highest in shade, average rho coefficient = 0.42.

Significance level at .05, 2-tailed.

As in the case of the proprietors, the internal relationships of the officials’

responses to the two groups of appraisal questions concerning the relative usefulness of administrative litigation against other methods and the courts' position in litigation, were much higher than the orientation average, reaching a mean of 0.50 and 0.60, respectively. With or without knowing, the officials' appraisal comments seem to reiterate the importance of the courts and to lesser extent, the influence of competing alternatives (especially the two informal methods of using *guanxi* and money), in affecting the usefulness of administrative litigation in practice.

3. External Relationship of the Officials' Appraisal Orientation

While the officials' appraisal orientation has a very strong internal relationship, it does not have a comparable external relationship. The results of correlation analysis on the external relationship of the officials' appraisal orientation are summarised in Table 6.11 below.

Table 6.11 External Relationship of the Officials' Appraisal Orientation

Orientation	Relationship
Cognitive	Small
Affective	Fairly Strong
Jurisdictional	Small
Evaluational	Small
Expectational	Small

Unlike the proprietors, the officials had their appraisal orientation towards administrative litigation significantly separated from their cognitive, jurisdictional, evaluational, and expectational orientations. The proprietors' answers to cognitive orientation question 2 about having heard of the administrative litigation institution and evaluational orientation questions 19 and 20 about the potential benefits of administrative litigation in protecting the citizens' legal rights and pushing the government to abide by the law, were the only cases to have incidental correlation with their answers to the appraisal orientation questions (see Table 6.12 below). Other correlation findings were basically not significant. In view of the lack of significant correlation, it may be concluded that the officials' appraisal comments on the usefulness of administrative litigation is by and large not tied with nor based on how much they know about the institution, how far they envisage its scope of jurisdiction, how confident they believe in its potential benefit, and how optimistic they estimate its future prospects. It is obvious that their appraisal orientation is not tied exclusively with the institution itself, but may be related with other factors, such as their above-mentioned concerns to defend administrative litigation, gloss over its limitations, understate their own threat to the institution as a result of their retaliatory actions, etc.

Table 6.12 Correlation Coefficients for the External Relationship of the Officials’ Appraisal Orientation

	Cognitive Orientation					Affective Orientation						Jurisdictional Orientation								Evaluational Orientation						Expectational Orientation					
Q	1	2	3	4	5	6	7	8	9	10	11	12	13	14	15	16	17	18	19	20	21	22	23	24	33	34	35	36	37		
25						27	21			24	19								24	24	26	29	20		20	24					
26								21			36					16	18	18													
27		32						19			33																				
28		42						20	28		28								17	17											
29		39							22		37				17																
30		31			28	26	18			21	38		23	19		21			18	17		17				21	17				
31								19	24	17	25																				
32		33			35					28	20								17				18	25		17					

Phi correlation for Q1-5, rho for others, phi & rho coefficients at 2 decimal points.
Significance level at .05, 2-tailed, negative in shade.

Affective orientation of the officials is the only exception to having a fairly strong relationship with their appraisal orientation towards administrative litigation. Officials, whose affective orientation was to support the institution’s establishment, care about its implementation, and keen to get acquainted with it, would tend to have more positive and supportive appraisal comments on the usefulness of the institution. The correlation was slightly lower for answers to appraisal orientation questions 26 about using *guanxi*, 27 about using money, 29 about the courts defending the administration, and 32 about use of administrative litigation being difficult. Spearman’s rho correlation coefficients between the officials’ appraisal and affective responses varied from 0.17 to 0.38 and averaged at 0.25 (see Table 6.12 above).

In summary, appraisal orientation of the sampled rulers appears to play a very different role in the latter's overall administrative litigation culture than in the case of the sampled ruled. For the ruled, appraisal orientation is closely related with the other orientations and constitutes an integral part of their overall administrative litigation culture. For the rulers, appraisal orientation is quite separated from the other orientations and does not play a similar important part in their overall administrative litigation culture. This is probably because the rulers' appraisal comments are not exclusively tied with administrative litigation *per se* but involve other factors and concerns that are related with their official position and status.

4. Appraisal Orientation among Different Sub-Groups of Officials

Detailed analysis of the officials' answers by means of cross-tabulation shows that three of their personal particulars have little association with their appraisal orientation, four have a slightly significant correlation, and only one, i.e. education level, has a significant relationship (see Table 6.13 below, details of the extensive cross-tabulation results are not displayed due to space constraints).

Table 6.13 Relationship between the Officials’ Appraisal Orientation and Personal Particulars

Level of Relationship	Personal Particulars
Insignificant	Gender Age Income
Slightly Significant	Political Status Working Years Department Working District
Significant	Education Level

Sub-Groups with Insignificant Relationship

Unlike the case of the proprietors where gender and age are both significant to appraisal orientation, these two personal particulars of the officials have no significant relationship with the latter’s appraisal orientation towards administrative litigation. Corresponding phi and rho correlation analyses also confirmed no significant relationship (see Table 6.14 below). For the first personal particular, officials of both gender groups displayed basically similar appraisal orientation towards administrative litigation, equally reflecting the overall level and pattern of the whole group’s appraisal orientation. As for the second personal particular, officials in the three different age sub-groups had quite different appraisal scores, displaying to a certain extent diverse appraisal comments. However, the scores were randomly distributed among all appraisal orientation questions, showing no

consistent or clear association with their appraisal orientation.

Table 6.14 Correlation Coefficients for the Officials’ Appraisal Orientation and Personal Particulars

Appraisal Orientation Question	Gender	Age	Political Status	Working Years	Department	Working District	Income	Education Level
25							.22	.25
26								.22
27								.18
28		.16						
29								
30								.18
31						.30		
32								

Phi for gender, Spearman’s rho for age, working years, income & education level.
Cramer’s V for political status, department & working district.
Significance level at .05, 2-tailed, negative in shade.

Monthly income of the officials was also found to have little relationship with their appraisal orientation largely because of statistical reasoning. While the sample size was already much smaller than that of the proprietors, the majority of the officials (almost 70 per cent) further concentrated in the single income sub-group of RMB601-1000. The next most substantial sub-group of RMB301-600 only constituted 20 per cent of the total respondents and the third sub-group of RMB1001-1500 a mere ten per cent. Comparison based on such a small sample with

uneven distribution might be inaccurate, especially when appraisal scores of the majority sub-group replicated the group norm and that of the other two sub-groups contained more extreme or uncertain distribution. The Spearman's rho correlation analysis also revealed little significant relationship (see Table 6.14 above).

Sub-Groups with Slightly Significant Relationship

Political status of the officials was like that of the proprietors in having a slightly significant relationship with their respective appraisal orientation but the pattern of the relationship was different. Officials with Communist Party membership, who tended to be older and politically more mature, were more protective towards the established system and the administration. They had the highest percentage who disagreed with the charge that courts would defend administration and had powerless verdicts, and the allegation that litigation was hampered by likely revenge.

Officials belonging to the Communist Youth League, who tended to be younger in both age and political life, were much less assured in their appraisal orientation, showing a lot of contradictory responses instead. They disagreed with the highest percentage that using personal connection was better than taking litigation, but they also agreed with the highest percentage that the courts were unfair in litigation

hearing and unbinding on the administration in verdicts. They had the highest percentage of both agreement and disagreement in the final appraisal orientation question about the institution's degree of difficulty in practice.

As for those independent officials, their appraisal comments were also quite contradictory. They had the highest percentage of both agreement and disagreement in the question on comparing the use of money and litigation. They disagreed with the highest percentage that administrative reconsideration was better than administrative litigation and courts could not fairly hear litigation. Yet, they also agreed with the highest percentage that using personal connection was better than taking litigation, courts would defend the administration, and citizens dared not to sue for fear of revenge. Although Cramer's V correlation analysis has no significant findings (see Table 6.14 above), it is obvious from the above that appraisal orientation of the officials is to certain extent tied with their political affiliation. The Party sub-group has more "official" appraisal answers, whereas appraisal opinions of the Communist Youth League sub-group is more "unsettled", and finally the independent sub-group has more "free" appraisal comments, saying what they regard as true.

Working years as a personal particular of the officials had a slightly significant relationship with their appraisal orientation towards administrative litigation. Although all five sub-groups basically recited similar appraisal comments which were more supportive than disapproving, slight difference relating negatively to their seniority was still apparent. The most junior sub-group argued quite strongly for administrative litigation, with the highest percentage who refuted money as better than litigation, hearing of the courts as unfair, and the administration as defended by the courts. In view that there were only nine new recruits in this sub-group, their appraisal comments might not be very representative, yet the next sub-group with 1-3 years in the government was not much less supportive. They had the highest percentage who rejected personal connection as better than litigation and potential revenge as preventing litigation, plus the second highest percentage who objected money as better than litigation, courts as defending and not binding the administration, and administrative litigation as difficult to practice.

On the other hand, those with longer years of service had more disapproving appraisal comments. For the 4-6 working years sub-group, they had the highest percentage of agreement in five of the eight appraisal orientation questions, including the courts' confined position, and the second highest percentage in the

other three questions of comparing administrative litigation with other problems solving methods. As for the three appraisal orientation questions of comparing administrative litigation with other problems solving methods, the highest percentage of regarding personal connection and money as more useful belonged to the sub-group with 7-10 years of service whereas those who supported administrative reconsideration as more useful were mostly in the sub-group of over ten years. After all, the above-mentioned negative relationship was not 100 per cent consistent and clear. Spearman's rho correlation analysis did not have significant findings for this personal particular as well (see Table 6.14). But that however slight relationship could not be denied either.

The officials' departmental background was not very significantly related with their appraisal orientation towards administrative litigation. Very distinct appraisal comments were not found based on departmental difference but unique variations were still observable. Public Security officials followed the group norm except being most at odds with the three appraisal orientation questions about weaknesses of the courts and the one about threat of revenge on pursue of litigation. Environmental Protection officials had the strongest admission that personal connection was more useful than administrative litigation. Industry and Commerce officials had the most

optimistic appraisal responses on putting administrative litigation into practice and superiority of administrative litigation over using personal connections.

Civil Affairs officials had the highest percentage who regarded administrative litigation as not better than internal reconsideration by the administration and not likely to be used given the threat of possible revenge. Hygiene officials cast the highest vote of confidence in administrative litigation as being better than administrative reconsideration and using money, in the courts' hearing as fair, and in administrative litigation as feasible despite potential threat of revenge. Fire Services officials had almost opposite appraisal comments, with the highest percentage who said that using money was better than taking litigation, the courts were not fair, would defend the administration, and their verdicts were not binding, and after all, administrative litigation was difficult to practice.

The relationship between the officials' working district and appraisal orientation was again slightly significant, in the sense that different sub-groups had slightly distinct scores and orientation away from the group norm, not that the overall degree of association was slightly weak. Appraisal comments of Hai Dian officials, who were mostly younger and junior, tended to be more optimistic,

disagreed with the highest percentage that money was more useful than litigation, courts were defending the administration, subsequent verdicts were not binding, and litigation was deterred by fear of revenge. Appraisal comments of Xi Cheng officials, who were mostly 30-40 in age and with over ten years of service, tended to be a bit more frustrated and desperate. They argued in the strongest for the practical usefulness of administrative litigation over and above the use of administrative reconsideration and personal connection. Yet, they also admitted with the highest percentage that administrative litigation was hampered by likely revenge and was difficult to put into practice. Comparatively, appraisal comments of Xuan Wu officials, who were mostly the oldest and most senior, showed the lowest regard for administrative litigation. They had the highest percentage who agreed that the institution was less useful than all other three suggested problems solving methods and that the courts did not have an impartial role nor binding authority in administrative litigation.

Sub-Group with Significant Relationship

Education level of the officials was the only personal particular having a significant relationship with their appraisal orientation, but interestingly in a negative sense, meaning the lower the education level, the more supportive in

appraisal comments, whereas the higher, the more disapproving. Of course, their relationship might not be exclusive and other intervening factors might be influential, e.g. age and political status. Anyhow, officials in the lowest education sub-group of upper secondary had the highest percentage of disagreement with four of the eight negative appraisal orientation questions and the second highest percentage in the other four, plus lowest percentage of agreement in six. In the opposite, officials in the highest education sub-group of undergraduate and above had the highest percentage of agreement with six of the negative appraisal orientation questions, plus lowest percentage of disagreement in all eight. In short, officials with a lower level of education were likely to have more approving appraisal comments on the usefulness of administrative litigation, whereas those with higher were likely to be less approving. Spearman's rho correlation analysis collaborated with the most significant findings in this personal particular with coefficients from -0.18 to -0.25 (see Table 6.14).

In summary, while personal backgrounds, such as age, gender, local ties and working district, of the ruled are important to their appraisal comments on the usefulness of administrative litigation in practice, the same is not true for the rulers. The latter's appraisal comments may be more closely tied with their political

concerns and positional considerations rather than their personal backgrounds. Education level is the only personal particular that has certain significance. But it seems that the more educated the officials are, the more critical they become. After all, limitations with the usefulness of administrative litigation are pretty obvious to both members of the ruled and rulers, and perhaps more so to those better educated and informed.

E. Summary

The usefulness of administrative litigation in the PRC, related articles in the PRC's Administrative Litigation Law, and the appraisal orientations of the ruled and rulers samples have been reported and discussed in this chapter. When members of the Chinese ruled and rulers agree with the potential benefits of administrative litigation, it does not mean that they are not aware of the limited usefulness of the institution in the present reality of the PRC. The entrenched practice of using *guanxi* and money to resolve problems by the Chinese is too pervasive and powerful for administrative litigation to demonstrate its usefulness. The present position of the courts in exercising its jurisdiction and enforcing its verdicts is too weak and inferior for administrative litigation to prove its usefulness. The incidents and the threat of

retaliatory action by the defending authorities and their officials is too menacing and harmful for administrative litigation to show its usefulness. The Law has done little to improve the situation but quite the opposite, has contributed to the problem by restricting the jurisdiction of the courts and the bringing of administrative litigation in the PRC.

With regard to the fifth research questions, i.e. how the Chinese ruled and rulers assess the usefulness of the PRC's administrative litigation, it is found that both parties equally express hesitations and doubts in their answers. The two parties' appraisal orientations are much less positive and agreeing than their other administrative litigation orientations, in fact the least positive and agreeing, testifying the greatest scepticism in this orientation. Such scepticism is common and consistent in the two parties' appraisal orientation answers as shown by a high level of internal relationship in both parties' appraisal orientations.

Despite the above similarities, appraisal orientation is found to have a different role in the configuration of the ruled and rulers' overall administrative litigation culture. Affective orientation is closely related with the other orientations and constitutes an integral part in the administrative litigation culture of the ruled. This is

not the case for the rulers, whose appraisal orientation is much less tied with the other orientations and whose administrative litigation culture is much less coherent.

As in the other orientations, the appraisal orientation of the ruled is much more closely related with and affected by the latter's personal background than the rulers. Members of the ruled who have lived long enough to get used to employing other problems solving methods, resided long enough to establish roots in the local community, and worked long enough to experience the administrative improprieties with the Chinese officialdom, will tend to have greater scepticism and reservation with the usefulness of administrative litigation. The same relationship between personal background and appraisal orientation is not obvious with members of the rulers. It is obvious that there are different sources of influence on the ruled and rulers' appraisal orientation as well as administrative litigation culture.

Different characteristics and perspectives of the ruled and rulers' administrative litigation culture are becoming more obvious when more and more administrative litigation orientations of the two parties are examined. The only one left behind is the expectational orientation, which will be discussed in the next chapter.

Chapter 7 Expectational Orientation and Further Development of the PRC's Administrative Litigation

Expectational orientation is the final constituent component of administrative litigation culture and the central theme of this chapter. It is another orientation unique to this study, not employed in previous political culture studies but believed to be essential in a full-blown cultural study. An examination of administrative litigation culture will not be complete if the concerned parties' expectational orientation is not identified. Similarly, a diagnosis of the PRC's Administrative Litigation Law will not be satisfying if only its deficiencies are explored without recommendations for its repair. And a study of the PRC's administrative litigation will not be thorough if recommendations for its further improvement are missing. In this final examination of administrative litigation in the PRC and administrative litigation culture of the Chinese ruled and rulers, the necessary improvements for further development of the PRC's administrative litigation will be suggested alongside with the presentation and discussion of the Chinese ruled and rulers samples' expectational orientation towards the PRC's administrative litigation.

A. Further Development of the PRC's Administrative Litigation

Discussions in earlier chapters have revealed that the PRC's administrative litigation is facing many obstacles and constraints, which can be harmful to the institution's future if not properly resolved. Those obstacles and constraints are wide-ranging, embedded in the Law, originated from the ruled, imposed by the rulers, and contributed by the courts. Suggestions for amendment and improvement in all four aspects are given below one by one.¹

1. The Law

Based on the five detailed diagnoses of the PRC's Administrative Litigation Law elaborated in the preceding five chapters, seven articles of the Law are found to be highly restrictive on the existing operation and future development of the PRC's administrative litigation, hence, amendment of those articles is necessary if the latter is to be strengthened and developed. Firstly, the three purposes set for the PRC's administrative litigation according to Article one of the Law are problematic, misleading, and mutually conflicting. Upholding the administrative authorities'

exercise of authority should not be the purpose of administrative litigation. Prompt hearing by the courts and supervising the rulers' exercise of authority are only the requisites and necessary steps to fulfill the real purpose of administrative litigation, i.e. protecting the lawful rights and interests of the ruled. Article one of the Law should contain only that single purpose for the proper execution and development of administrative litigation in the PRC.

Secondly, Article five of the Law traps the operation and development of administrative litigation in the PRC by stating two restrictions, i.e. examination of specific administrative acts only and examination of their legality only. Lawful rights and interests of the ruled cannot be fully protected and administrative litigation cannot be fully established under these two qualifications. The article should be amended to allow the PRC's administrative litigation to examine both specific and abstract administrative acts and most preferably the reasonableness of these acts as well.

Thirdly, the scope of protection and review specified in Article 11 of the Law is too narrow for protecting lawful rights of the ruled and allowing growth of

administrative litigation in the mainland. Administrative litigation should not be restricted to reviewing the rulers' infringement on the ruled's personal and property rights only. The article should be revised to allow administrative litigation to review all infringements by the rulers on all kinds of lawful rights and interests of the ruled, including political and social rights. Fourthly, Article 12 of the Law should also be amended for the same reasons by reducing the list of exemptions to include only acts of the state. Administrative rules and regulations (i.e. abstract administrative acts), internal personnel decisions of the administration, and the so-called 'ultimate' specific administrative acts (i.e. acts declared as ultimate by laws and administrative rules) should not be allowed to escape the jurisdiction of administrative litigation.

Fifthly, Article 41(1) of the Law restricts the protection of administrative litigation to only those members of the ruled whose rights are being "directly" infringed while those who have their rights indirectly infringed are not entitled to such protection. The article should be amended by removing this unreasonable restriction if lawful rights of all the ruled are to be equally protected and administrative litigation is to be fairly implemented and further developed.

Sixthly, following the above suggestion to include examination of the reasonableness of the rulers' administrative acts within the jurisdiction of administrative litigation, Article 54(4) of the Law will have to be amended to allow the courts to revoke administrative acts that are unjust or unreasonable. Lastly, the punishment of concerned officials for their administrative improprieties is too lenient under the present Article 68 for sufficient correctional and deterring effects. Although acting in the name of the government, individual officials should also bear the responsibility for their misuse of public power and improper acts. The penalty code that incident of administrative impropriety will be recorded in the personal dossiers of responsible officials and will be considered in the latter's performance appraisals, should be written into the said article so that proper administration and rule according to the law can be promoted and the full effects of administrative litigation can be achieved.

The above suggested amendments of the Law aim to bring the PRC's administrative litigation back to its real purpose, put the institution on the right path, and foster its further development in the long-run, but that objective also depends on the serious execution of the Law, and implementation of related supporting laws.

Revising the Law cannot help further administrative litigation if the Law is not seriously followed and executed. The Law, however well written, also needs the support of related legislation, e.g. the PRC's State Compensations Law and the PRC's Administrative Procedure Law, and their proper execution for a concerted effort to protect lawful rights of the ruled, to promote rule according to the law among the rulers, and to improve the ruled-rulers relationship in the mainland.

2. The Ruled

If administrative litigation is to be promoted and developed in the mainland, the “three-don’t” syndrome of the Chinese ruled must be cured. Administrative litigation cannot endure and grow if the ruled don’t know how to sue, don’t want to sue, and don’t dare to sue despite their intense need to do so. Short-lived propaganda by the rulers on the value and significance of the PRC’s administrative litigation during its promulgation is more a display of the rulers’ achievement than the education of the ruled on how to use the institution. To begin with, continuous promotion on what is administrative litigation, comprehensible explanation of the Law’s stipulations, and user-oriented education on when, where and how to sue are

just the basic necessary steps to bring administrative litigation to the ruled. Every effort must be made to pass those information onto every member of the ruled, however remote they live and whatever job they do.

On the other hand, to bring the ruled to administrative litigation can be more difficult because removing their hesitation and worry with the use of administrative litigation is not easy. The Chinese tradition of avoiding the rulers and the courts needs to be changed through long-term reinforcing education on the usefulness and helpfulness of the institution. This relates with the above suggested amendments of the Law to strengthen the usefulness of administrative litigation. The more helpful the institution is, the more attractive its use will be. In addition, promoting the idea of rule of law in the society and the use of litigation as means to resolve disputes can also help bring the Chinese ruled closer to the PRC's administrative litigation. This relates with the strengthening of the Chinese legal system which will be discussed in the last section concerning the courts.

Hesitation with the use of administrative litigation can also be reduced if the related troubles are reduced to the minimum and maximum assistance is provided.

Some commentators suggest removing the basic-level people's courts from first hearing of administrative litigation cases so that the latter will be conducted by more powerful intermediate level people's courts.² This may be advantageous to a minor group of the ruled who live in the cities and close to the higher level people's courts. But for the majority who reside in the counties and countryside, that would mean a lot more trouble and difficulty with the pursuit of litigation. The proposal will simply bring more harm than benefit. On the contrary, administrative litigation should be made as convenient as possible for the users, e.g. easily accessible, minimum formalities, and little technical procedure. Besides, assistance such as an information hot line, inquiry services, consultation aid, and help with filling in related papers, should be made available to potential users to facilitate their pursuit of litigation.

Finally, worries with the use of administrative litigation can be reduced if the ruled are reassured of fair hearing and protected from retaliatory actions after suing the rulers. That can be difficult because the Chinese judiciary is dependent on the administration and the latter has been and is still overwhelmingly powerful. Measures to control retaliatory actions and to ensure a fair hearing will be discussed

in the following sections concerning the rulers and the courts, respectively.

3. The Rulers

Rectifying the rulers' "three-averse" syndrome, strengthening their legal training, rationalising their self-legislated rules and regulations, and preventing them from taking retaliatory actions after being sued, are some of the urgent tasks to be carried through not just for improving their administration but also for reducing their hindrance to the development of administrative litigation in the PRC.

The "three-averse" syndrome among the rulers mainly originates from a self-asserted sense of incontestability and supremacy over the ruled. If the rulers can really accept the proclaimed slogan that they dedicate to serve the people, the proclaimed master of the country, then they would not have undue worry about and passive resistance to administrative litigation. The key to rectifying the rulers' "three-averse" syndrome is therefore to change their attitude through education. They must be taught to drop their feeling of incontestability and supremacy so that they can accept being sued by the ruled and being equal with the ruled in

administrative litigation. The officials should have it explained to them that administrative litigation is just a legal forum for the ruled to defend lawful rights as much as for the rulers to defend lawful administrative acts, and that being sued does not mean they have been wrong or they will lose in the end of litigation. The rulers should be cultivated with the courage to appear in courts to defend, if not to account for, their actions, and to take up rebuttal or punishment for their faults. They should be reminded that their reputation and legitimacy depend not just on their good administration but also, or perhaps more so, on their correcting wrongful administration. In a word, they should be told that administrative litigation is not a threat or harassment but an opportunity if they are faultless, a rescue if they are not.

Besides the above remedial education, further legal training for the rulers is essential if obstruction to administrative litigation is to be reduced and development to be facilitated. The rulers should be trained to respect the law so that they would respect administrative litigation and the courts. They should be trained to accept the rule of law so that they would not interfere with the process, participants, evidence and fairness of litigation. They should be trained with the laws upon which to exercise their authority so that they can observe the limits and procedure, thereby

reducing the cases for litigation on one hand and strengthening their own cases on the other hand. Such training should be given to all administrative officials, especially those in law enforcement and senior management because of their strategic position. Officials who represent the administration in litigation should also be trained with the necessary knowledge and skills so that they can fulfill the obligations of a defendant and facilitate the process of litigation.

The third task is to rationalise the rulers' self-legislated administrative rules and regulations because the latter are too chaotic and defective at present to provide a clear and appropriate legal basis for the rulers to rule, the ruled to observe, and the courts to judge. Rules and regulations that contravene the constitution, state's laws or higher level administrative rules are simply illegal and should be discarded. Administrative acts based on such illegal rules and regulations are equally unlawful and should be revoked. Arbitrary or unreasonable rules and regulations should be amended and the related administrative acts corrected. Ambiguous rules and regulations should be clarified and better guidance should be given to front-line officials on the exercise of discretionary powers. Such a rationalisation exercise involves an enormous amount of work and all levels of the administration, from the

State Council to local level governments. Yet, it is only after the rulers complete this task seriously and satisfactorily can they then establish a solid ground to support their administrative acts, the courts find a yardstick for their judgment, and administrative litigation acquires the legal basis to proceed.

The final task focuses on the problem of government officials' retaliation or threat of retaliation which deters the ruled from suing and hinders administrative litigation from growing. In fact, there are a lot of existing channels whereby those illegal retaliatory actions can be reported and handled, e.g. respective people's congress, higher levels of the government, the courts, the procuratorate, and even the mass media. However, the question is their effectiveness and helpfulness. To resolve the problem, these channels should be invigorated to strengthen their effectiveness in dealing with retaliation complaints. The affected members of the ruled should be encouraged to make complaint of such retaliation and reassured that their complaints will be seriously handled. Officials found responsible for retaliation have to be seriously punished, including dismissal or transfer-out. Strictly prohibiting and punishing retaliatory actions is essential to the normal functioning of administrative litigation and the building of a fair society.

4. The Courts

The judiciary plays a very important role as the arbitrator in administrative litigation as well as the executor and defender of the institution, hence, strengthening the Chinese judiciary is critical to the implementation and development of the PRC's administrative litigation. Firstly, the judiciary must be separated from the administration and given its own budget and provisions to be managed vertically within the judiciary system so that the judiciary will no longer have to depend on the administration whom may appear as defendant in administrative litigation.

Secondly, a team of professional administrative litigation judges must be established. The judges should be selected carefully from candidates of top calibre based strictly on merits, appointed with tenure for stronger sense of commitment and better career development, assured of job security if they can maintain good job performance, and paid with reasonably attractive remuneration to keep their attention on the job. They have to be accountable to the appointing authorities, whether the people's congress or higher level of the judiciary, only for their personal integrity and overall job performance, not specific decisions in individual cases.

Relevant and continuous training should be arranged for the judges to build up their professional knowledge and skills in respect of the conduct of administrative litigation, the contents of administrative legislation, and the conditions of public administration in the mainland.

Thirdly, pitfalls in the conduct of case hearings should be corrected. The courts should stop playing the role of case investigator and prosecutor but retreat to acting as an independent arbitrator only rather than a master of the entire hearing process. There should be no more nominal collegial panel where in fact the first judge conducts the entire hearing. Members of the collegial panel should be carefully chosen to ensure they are all competent with regard to the case and assigned once a case is accepted to allow them time to prepare for the hearing. The panel should be given full power to hear the case independently, not on the direction of higher level court officials, and all members of the panel should be required to bear the full responsibility for their collective decisions. During the hearing, both the plaintiff and defendant should be allowed to present their cases and evidence fully in open court so that rights and wrongs can be clarified before all parties, justice can be protected throughout the process, and the final decision can be accepted by both the winner

and loser in the end. A major fault with past hearings is shifting the focus of hearing from examining the legality and reasonableness of the defendant's administrative acts to exploring the plaintiff's liability for the administrative acts and that mistake must be corrected if the hearing is not to be misdirected.

In summary, separating the judiciary from the administration, building a professional team of administrative litigation judges, and reforming the hearing system, are some of the more important tasks to be fulfilled in respect of the courts if administrative litigation is to be better implemented and developed in the mainland.

B. Expectational Orientation of the Surveyed Individual Household Proprietors

As elaborated in the theoretical framework, expectational orientation refers to the faith of the concerned parties in administrative litigation, their belief about the institution's prospects, and hopes for its future. In particular, it seeks to explore how far the parties believe administrative litigation should be further developed, on what grounds and under what conditions. Accordingly, five questions were asked of the

sampled proprietors to measure their expectational orientation (see Table 7.1 for the questions). Their responses are reported and discussed in the following.

1. Overall Level and Pattern of the Proprietors' Expectational Orientation

In response to the first three expectational orientation questions about whether they look forward to further developing administrative litigation in the PRC and on what grounds, the proprietors' replies were very much alike, with standard deviations as small as 0.58 to 0.64 (see Table 7.1 below). In all three cases, over 90 per cent of the proprietors readily articulated support for further development of administrative litigation, with above 30 per cent of them stating totally agree, and only less than 2 per cent saying no (see Appendix 5). In particular, the proprietors' first concern and strongest support (93.5 per cent) was due to expectation for further protection of citizens' legal rights and interests under administrative litigation. This was followed by the expectation for strengthening the rule of law under the institution (91 per cent), and then advancing the reform and opening (90.1 per cent). It is obvious that all the three reasons are more or less equally important in the proprietors' expectational orientation, and are all important factors contributing to

their support for further development of administrative litigation in the mainland.

Table 7.1 Responses of the Proprietors to the Five Expectational Orientation Questions

			A	N	D	?	s.d.
33	Administrative litigation can help advance the reform and opening, hence should be further developed.	q	652	35	11	26	0.64
		%	90.1	4.8	1.5	3.6	
34	Administrative litigation can help protect citizens' legal rights and interests, hence should be further developed.	q	678	26	4	17	0.58
		%	93.5	3.6	0.6	2.3	
35	Administrative litigation can help strengthen the rule of law, hence should be further developed.	q	657	37	8	20	0.61
		%	91.0	5.1	1.1	2.8	
36	Development of administrative litigation requires judicial independence.	q	414	77	73	160	1.02
		%	57.2	10.6	10.1	22.1	
37	There is a bright future for administrative litigation but the road is winding.	q	596	57	17	54	0.70
		%	82.3	7.9	2.3	7.5	

A = Totally agree and agree; N = Neutral; D = Totally disagree and disagree;
? = Don't know; s.d. = Standard deviation; q = Frequency.
"Don't know" and "missing value" not included in the calculation of standard deviation.

Besides high expectations, the majority of the proprietors also had faith in the institution's future but they were equally aware of the difficulties on the way. Up to 82.3 per cent of the proprietors understood the road to success would be winding. With regard to judicial independence as a necessary condition for further development of administrative litigation, the proprietors were much more unsure. There were 57.2 per cent of them who believed judicial independence was necessary, 10.1 per cent considered it not necessary, and as much as 32.7 per cent were not sure

or did not have an answer. Diversity in their responses to this question produced a much higher standard deviation of 1.02.

Overall expectational orientation scores of the proprietors indicate a clear majority of 82.8 per cent in support of further developing administrative litigation in the mainland, despite all practical difficulties, and securing judicial independence is probably one of the difficulties that needs to be overcome (see Table 7.2 below). Unsupporting opinion amounts to only 3.1 per cent. After all, administrative litigation is tied with the proprietors’ personal interests and the nation’s well being. It is clear that most of the proprietors have no doubt about that, they have solid faith in the institution and high hope for its further development.

Table 7.2 Overall Expectational Orientation Scores of the Proprietors

		A	N	D	?
Overall Expectational Orientation	tq	2997	232	113	277
	aq	599.4	46.4	22.6	55.4
	%	82.8	6.4	3.1	7.7

A = Totally agree and agree; N = Neutral; D = Totally disagree and disagree;
? = Don’t know; tq = Total Frequency; aq = Average Frequency.

2. Internal Relationship of the Proprietors' Expectational Orientation

Expectational orientation is the fourth administrative litigation orientation of the proprietors with a perfect internal relationship (see Table 7.3 below). The proprietors' answers to all five expectational orientation questions were mutually correlated. The degree of correlation was pretty strong as well, with an average correlation coefficient of 0.53. Responses to the first three expectational orientation questions on the grounds for supporting further development of administrative litigation had an association coefficient even up to 0.80, which was much higher than the average. It is clear that there are multiple grounds for the proprietors' expectation for further development of administrative litigation and those considerations are all important in leading to the proprietors' high hope for a better administrative litigation in the mainland. With greater uncertainty on the issue of judicial independence, the proprietors' answers to that question were least correlated with that of the other four questions.

Table 7.3 Spearman's rho Correlation Coefficients for Internal Relationship of the Proprietors' Expectational Orientation

Q	33	34	35	36	37
33		.78	.78	.31	.47
34	.78		.80	.31	.50
35	.78	.80		.39	.52
36	.31	.31	.39		.41
37	.47	.50	.52	.41	

Row highest in shade, average rho coefficient = 0.53.

Significance level at .05, 2-tailed.

3. External Relationship of the Proprietors' Expectational Orientation

The external relationship of the proprietors' expectational orientation measured by correlation analysis is summarised and reported in Table 7.4 below.

Table 7.4 External Relationship of the Proprietors' Expectational Orientation

Orientation	Relationship
Cognitive	Slight
Affective	Small
Jurisdictional	Perfect
Evaluational	Perfect
Appraisal	Very Strong

The proprietors' cognitive and expectational orientations were only slightly related, meaning that their expectation in respect of administrative litigation was

basically not tied with nor based upon their cognition of it. A slightly better correlation was found for answers to cognitive orientation questions 4 and 5 about knowledge of the Law. It seems that proprietors with more specific knowledge of the Law tend to have higher expectation. However, that association was not too strong, with Spearman’s rho correlation coefficients from only 0.14 to 0.19 (see Table 7.5 below). Yet, it is quite obvious that simple realisation of the existence of administrative litigation is not enough for members of the ruled to breed high expectations whereas more solid cognition would tend to help.

Table 7.5 Correlation Coefficients for External Relationship of the Proprietors’ Expectational Orientation

	Cognitive Orientation					Affective Orientation						Jurisdictional Orientation								Evaluational Orientation						Appraisal Orientation							
Q	1	2	3	4	5	6	7	8	9	10	11	12	13	14	15	16	17	18	19	20	21	22	23	24	25	26	27	28	29	30	31	32	
33		14			18			10		08		23	22	24	22	19	18	18	42	40	43	40	39	33	08	09			14	14	12	15	
34	16	15		16	15			09				22	20	21	22	16	14	14	40	41	41	39	36	29	11	11			13	15	12	14	
35			15	18	14			10			10	27	26	27	26	21	19	20	38	38	42	37	39	37	15	16	10	11	18	18	14	20	
36				16	17		08					16	22	24	23	27	16	20	08	11	16	14	19	27	25	19	17	25	31	29	22	29	
37				19	17						11	18	22	20	25	17	17	16	23	29	29	24	24	27	15	11	09	16	19	15	14	16	

Phi correlation for Q1-5, rho for others, phi & rho coefficients at 2 decimal points.
Significance level at .05, 2-tailed, negative in shade.

To a lesser extent, expectational orientation of the proprietors was also not tied with nor based upon their affective orientation towards administrative litigation.

Limited association was found between the two except for affective orientation question 8, i.e. whether the respondent supported establishing the institution. Yet, the correlation coefficients were even less strong, only -0.09 to -0.10. It seems that how well the respondents receive the institution and how far they want it to go are two quite different issues. The former is more about feeling while the latter is more on the practical side of the subject. That may as well explain the close relationship between jurisdictional and expectational orientations of the proprietors.

Both being concerned with administrative litigation in practice, jurisdictional and expectational orientations of the proprietors matched with a perfect relationship. Although the Spearman's rho correlation coefficients were not too high, just 0.14-0.27, but answers to all questions of the two orientations were indeed significantly related. It may be said that what they conceive administrative litigation should do, inherently leads to which direction they expect the institution to develop. In particular, answers to the five jurisdictional orientation questions concerning the depth of protection under administrative litigation had a closer association with answers to all expectational orientation questions than that of the other two jurisdictional orientation questions about the width of protection. The two types of

protection do manifest difference when related with the long-term development of administrative litigation, i.e. the depth of protection is more important and influential.

Based on the conceived capacity of administrative litigation, subsequent effects of the institution can be calculated, and then its likely prospects can be projected. However remote, that is the consequential order mentioned in chapter 5 and inferred from the finding of a perfect relationship between the proprietors' jurisdictional and expectational orientations, as well as between their evaluational and expectational orientations. The degree of correlation for the latter varied from Spearman's rho correlation coefficients of 0.08 to 0.42, with the highest for answers to expectational orientation question 33 about administrative litigation could help promote reform, and the lowest for answers to expectational orientation question 36 about judicial independence. The average correlation coefficient was 0.32.

Lastly, relationship of the proprietors' expectational orientation with their appraisal orientation was also very strong, with Spearman's rho correlation coefficients from 0.08 to 0.31. Only answers to two of the appraisal and

expectational orientations questions were not mutually correlated. It indicates that the proprietors’ expectation on the future of administrative litigation is also tied with and, to certain extent, affected by their appraisal of the institution’s usefulness.

4. Expectational Orientation among Different Sub-Groups of Proprietors

Detailed analysis of the proprietors’ responses by means of cross-tabulation shows that two of their personal particulars have little association with their expectational orientation, four have a slightly significant correlation, and the other three have a significant relationship (see Table 7.6 below, details of the extensive cross-tabulation results are not displayed due to space constraints).

Table 7.6 Relationship between the Proprietors’ Expectational Orientation and Personal Particulars

Level of Relationship	Personal Particulars
Insignificant	Gender Income
Slightly Significant	Age Political Status Kind of Business Working District
Significant	Working Years Residency Education Level

Sub-Groups with Insignificant Relationship

As in the case of four other orientations, gender was again not an important factor in the proprietors' expectational orientation and had no significant relationship with the latter. Both gender sub-groups had a similar expectation on administrative litigation especially in support of it based on the three suggested grounds. Slight difference was only discerned in the last two expectational orientation questions. A significantly higher percentage of the male proprietors believed that administrative litigation would have a bright future though not an easy one and that judicial independence was necessary for the institution's real progress. Comparatively, the females were less certain in these two regards, with much more unknown answers to both questions. The phi correlation analysis also generated little significant findings (see Table 7.7 below).

Table 7.7 Correlation Coefficients for the Proprietors’ Expectational Orientation and Personal Particulars

Expectational Orientation Question	Gender	Age	Political Status	Working Years	Kind of Business	Residency	Working District	Income	Education Level
33	.14	.13		.12			.12		.08
34		.09		.09					
35		.15		.12		.13			.09
36	.16	.21	.12	.18		.29	.12	.13	.19
37		.15		.08		.15	.12		.10

Phi for gender & residency, Spearman’s rho for age, working years, income & education level.

Cramer’s V for political status, kind of business & working district.

Significance level at .05, 2-tailed, negative in shade.

Income of the proprietors was another personal particular found to have little relationship with their expectational orientation because the expectational orientation scores for sub-groups of this personal particular were very fluctuating, showing no consistent pattern of association. Uneven distribution of the proprietors sample among various income sub-groups also made the search for correlation difficult. Statistical bias might happen to sub-groups with particularly small sizes like the three highest income sub-groups. Spearman’s rho correlation analysis also gave no significant findings (see Table 7.7 above). In short, how much income the proprietors earn each month seems to have no impact on how they foresee the future

of administrative litigation, i.e. personal economic factor is not too important here.

Sub-Groups with Slightly Significant Relationship

Age of the proprietors showed a slightly positive relationship with their expectational orientation, especially with regard to the last two expectational orientation questions about judicial independence and the institution's road ahead. The majority of the proprietors belonged to the first two age sub-groups where the elder ones had significantly higher percentage of supportive answers to all expectational orientation questions than the younger ones. In addition, the eldest age sub-group of over 60 also had the highest percentage of positive answers to two of the expectational orientation questions and the second highest to the other three. On the contrary, the younger age sub-group tended to have a higher percentage of neutral, negative and unknown answers. On the whole, greater years of age was related with a higher expectation on administrative litigation as well as greater consensus on a winding road ahead for the institution. Spearman's rho correlation analysis also confirmed that answers to all five expectational orientation questions were significantly related with the proprietors' age, but the correlation coefficients were not too high, from just -0.09 to -0.21 (see Table 7.7 above).

Political status of the proprietors was also found to have a slightly significant association with their expectational orientation because one of the sub-groups, i.e. Communist Party members, possessed distinctly higher scores in all five expectational orientation questions, suggesting a relatively greater influence of such membership on their expectational orientation. Other than those democratic parties members who did not have a sufficient population in the sample for viable comparison, the other two sub-groups of Communist Youth League members and independent proprietors had quite similar expectational orientation scores except on the issue of judicial independence where the Communist Youth League members disagreed significantly more. Yet, such a difference was not comparable to the departure from group norm of the Communist Party members who had distinctly high affirmative answers to all expectational orientation questions. Their consistency in saying yes was not matched by the other two sub-groups. Yet, Cramer's V correlation analysis could not reveal the above association in its findings (see Table 7.7 above).

Analogous to their appraisal orientation, the proprietors' expectational orientation was also slightly related with and affected by their kind of business in

that the repairing sub-groups responded uniquely distinct from the rest. Although the repairing sub-group was most negative with the practical usefulness of administrative litigation under the present reality of the PRC as mentioned in the last chapter, they had the highest faith and greatest hope in the institution's future. They rendered 100 per cent support for further development of administrative litigation with no hesitation, seeing all three suggested grounds important and sound enough for rendering support. They also agreed with the highest percentage that judicial independence was important and necessary for furthering the institution. The other three sub-groups of retailing, catering, and servicing proprietors had basically similar expectational orientation scores and their nature of business did not seem to have differentiating effect on their expectational orientation. Again, the Cramer's V correlation analysis failed to identify such a unique relationship and turned out with no significant findings (see Table 7.7 above).

Proprietors working in different districts were basically similar in their level of conviction about improving administrative litigation. However, they differed significantly in how they saw the institution's future. Xuan Wu district proprietors were much more convinced with the necessity of judicial independence and the

possibility of a bright future for administrative litigation, whereas Hai Dian district proprietors, who tended to be younger and better educated, were much less optimistic in both regards. In view of this, the working district of the proprietors was regarded as having only slight impact on and association with their expectational orientation. Cramer's V correlation analysis also affirmed a significant association between working district and answers to the first and the last two expectational orientation questions, with the same coefficient of 0.12 (see Table 7.7 above).

Sub-Groups with Significant Relationship

On the whole, there was basically a significant positive relationship between the proprietors' working years and expectational orientation but there was consistent slight variation at both extremes of the sub-groups. Looking at the agreeing answers in all expectational orientation questions, there was a significant percentage increase with the rise in seniority for the middle three sub-groups between one to ten years in the job. Proprietors with longer working years tended to have stronger and more positive expectation on administrative litigation. Yet, the new entrances of less than one year had higher expectations than the next more senior sub-group of one to three years in four expectational orientation questions, though still lower than the next

sub-group of four to six years. On the other hand, the most senior sub-group with over ten years as proprietors did not follow the increasing trend but had slight regress in all questions. Such trend of positive increase with zigzag at both ends was pretty consistent, clearly showing how the proprietors' expectational orientation changed with their years in the industry. Spearman's rho correlation analysis also confirmed a significant relationship between working years and answers to all expectational orientation questions, with coefficients from -0.08 to -0.18 (see Table 7.7 above).

With or without local residency was also significantly related with the proprietors' expectational orientation. Those with Beijing municipal residency had significantly higher percentage of supportive answers to all expectational orientation questions than those without, especially to the last two questions about judicial independence and the road ahead for administrative litigation. With a closer tie to the locality and probably stronger sense of belonging, local residents presented a higher expectation on administrative litigation and more affirmative answers on the necessity of judicial independence and likelihood of a bright future. Those without residency were much more unsure on the issue of judicial independence, with

significantly higher percentage of disagreeing and unknown answers. The phi correlation analysis confirmed a significant relationship between residency and answers to the last three expectational orientation questions with coefficients from 0.13 to 0.29 (see Table 7.7 above).

A basically positive relationship was also found between the proprietors' education level and expectational orientation. Higher level of education was correlated with higher level of expectation on administrative litigation. Though being only the minority sub-group, proprietors with undergraduate and above education presented 100 per cent support for the institution's further development. A slight variation happened to the second lowest education sub-group of lower secondary only, whose percentage of supportive answers to the last two expectational orientation questions was the lowest while that of unknown answers was highest. This sub-group appeared to be most uncertain in regard of the necessity of judicial independence and the road ahead for administrative litigation. Spearman's rho correlation analysis also confirmed a significant relationship between education level and answers to four of the expectational orientation questions, with coefficients of -0.08 to -0.19 (see Table 7.7 above).

In summary, the majority of the interviewed proprietors supported further development of administrative litigation, agreed with the grounds for such development, and expected a bright future for the institution. Major deviation from this group norm was only observed in sub-groups under three personal particulars. To certain extent, proprietors with lower level of education, fewer working years in the industry, and catering and servicing as their businesses, were likely to have lower level of expectation on administrative litigation and support for its further development. In respect of the last two expectational orientation questions about judicial independence and the road ahead for administrative litigation, greater variation was found in the proprietors' answers. Proprietors who were males, older in age, senior in the industry, retailing by business, Communist Party members, local residents, and better educated, tended to have distinctly more affirmative answers, regarding judicial independence as indispensable and the future for administrative litigation to be bright. To conclude, supporting further development of administrative litigation is little disputed by the proprietors, but how and how far are issues with dissonance.

C. Expectational Orientation of the Surveyed Government Officials

1. Overall Level and Pattern of the Officials' Expectational Orientation

Unlike the proprietors who are the principal beneficiaries of administrative litigation, government officials are potential defendants to whom the institution may be less pleasing. However, the interviewed officials uttered even stronger support for the institution's further development than the proprietors, though for slightly different reasons. Enhancing rule of law in the country was the most important expectation of the officials, shared by 96.0 per cent of the sample, when they offered support for the institution's continuity (see Table 7.8 below). The proprietors' first choice of strengthening protection of citizens' legal rights and interests was only the second concern to the officials, maintained by 94.7 per cent of the sample, yet still 1.2 per cent higher than the proprietors. Last was helping the reform and opening, declared by 90.7 per cent of the sample. If the officials' answers represent their true expectation, then they are supporting the institution not for their own interest or direct benefit, but for the well-being of the society and the ruled in general. That is in itself already very promising for the future of administrative litigation.

Table 7.8 Responses of the Officials to the Five Expectational Orientation Questions

		A	N	D	?	s.d.
33	Administrative litigation can help advance the reform and opening, hence should be further developed.	q 138 % 90.7	11 7.2	2 1.4	1 0.7	0.65
34	Administrative litigation can help protect citizens' legal rights and interests, hence should be further developed.	q 144 % 94.7	5 3.3	1 0.7	2 1.3	0.58
35	Administrative litigation can help strengthen the rule of law, hence should be further developed.	q 146 % 96.0	5 3.3	1 0.7	0 0.0	0.58
36	Development of administrative litigation requires judicial independence.	q 117 % 76.9	20 13.2	7 4.6	8 5.3	0.78
37	There is a bright future for administrative litigation but the road is winding.	q 134 % 88.2	13 8.5	1 0.7	4 2.6	0.58

A = Totally agree and agree; N = Neutral; D = Totally disagree and disagree;
? = Don't know; s.d. = Standard deviation; q = Frequency.
"Don't know" and "missing value" not included in the calculation of standard deviation.

Another promising sign is 76.9 per cent of the interviewed officials subscribed to judicial independence for the development of administrative litigation, which is 19.7 per cent higher than that of the proprietors. Only less than 5 per cent of the officials did not see the need. Moreover, 88.2 per cent of them expected a bright future for administrative litigation despite a rather zigzag road along the way. In view of the fact that allowing judicial independence is not the official policy, the officials' responses are believed to reflect their individual opinions, not the official standpoint, and their responses are indeed unorthodox and daring.

On the whole, expectational orientation of the officials was even more positive with more supportive answers and more consistent with smaller standard deviations than the proprietors. The officials’ overall expectational orientation scores showed 89.3 per cent being optimistic and expectant with administrative litigation, which was 6.5 per cent higher than that of the proprietors. Only 1.6 per cent of the officials as a whole expressed negative expectations (see Table 7.9 below).

Table 7.9 Overall Expectational Orientation Scores of the Officials

		A	N	D	?
Overall Expectational Orientation	tq	679	54	12	15
	aq	135.8	10.8	2.4	3.0
	%	89.3	7.1	1.6	2.0

A = Totally agree and agree; N = Neutral; D = Totally disagree and disagree;
? = Don’t know; tq = Total Frequency; aq = Average Frequency.

2. Internal Relationship of the Officials’ Expectational Orientation

The expectational orientation of the officials was the third and the last one to have a perfect internal relationship besides jurisdictional and evaluational orientations (see Table 7.10 below). In much the same way as the proprietors, the officials’ answers to all five expectational orientation questions were mutually correlated and the degree of correlation was quite strong as well, with an average

coefficient of 0.54. Answers to the first three questions on the grounds for support of further developing administrative litigation were also found to be more closely related, with coefficients up to 0.88. The officials also exhibit multiple grounds for their expectation on further development of administrative litigation and those reasons are very much inter-related. With greater certainty on the issue of judicial independence, the officials' answers to that question were not much less correlated with that of the other questions, especially with answers to the last question where a higher than average coefficient was found.

Table 7.10 Spearman’s rho Correlation Coefficients for the Internal Relationship of the Officials’ Expectational Orientation

Q	33	34	35	36	37
33		.79	.72	.33	.43
34	.79		.88	.27	.51
35	.72	.88		.31	.53
36	.33	.27	.31		.60
37	.43	.51	.53	.60	

Row highest in shade, average rho coefficient = 0.54.
 Significance level at .05, 2-tailed.

3. External Relationship of the Officials’ Expectational Orientation

The external relationship of the officials’ expectational orientation measured by

correlation analysis is summarised and reported in Table 7.11 below.

Table 7.11 External Relationship of the Officials’ Expectational Orientation

Orientation	Relationship
Cognitive	Small
Affective	Fairly Strong
Jurisdictional	Fairly Strong
Evaluational	Perfect
Appraisal	Small

The expectational orientation of the officials had limited relationship with their cognitive orientation, to an even lesser extent than the proprietors. Simple realisation and solid understanding of administrative litigation do not seem to make any difference in the officials’ expectational orientation. After all, the cognitive orientation of the officials is found to be insignificantly related with their all other five orientations, which means that cognitive orientation may not be a very important part of the officials’ administrative litigation culture.

To a greater extent than the proprietors this time, a fairly strong relationship was found between the officials’ expectational and affective orientations, with Spearman’s rho correlation coefficients from -0.17 to -0.35 (see Table 7.12 below).

As mentioned in chapter 3, the officials’ answers to all expectational orientation questions, except question 36 about judicial independence, were significantly correlated in ascending order with their answers to affective orientation questions 6, 8, and 10. To reiterate, officials who agreed with the use of administrative litigation, supported its establishment, and, in particular, cared for its implementation, were also likely to have a greater commitment to the institution’s further advancement, especially on the grounds of protecting citizens’ legal rights and promoting further reform and opening. It seems that better affective feeling towards administrative litigation can contribute to a higher expectation on the latter among the officials.

Table 7.12 Correlation Coefficients for the External Relationship of the Officials’ Expectational Orientation

	Cognitive Orientation					Affective Orientation						Jurisdictional Orientation								Evaluational Orientation						Appraisal Orientation							
Q	1	2	3	4	5	6	7	8	9	10	11	12	13	14	15	16	17	18	19	20	21	22	23	24	25	26	27	28	29	30	31	32	
33						26	23	30		23		29	28	17	34			24	47	45	46	32	35	35	20								
34		37			32	24	24	33		35	19	33	33	20	31	21		27	53	51	47	38	29	27	24					21		17	
35		37			23	23		26		28		37	32	24	33	18		29	49	42	43	39	23	22						17			
36														21	17				22	29	35	29	22	22									
37			30			17		22		33		26		26	22	19		23	46	47	47	38	25	26									

Phi correlation for Q1-5, rho for others, phi & rho coefficients at 2 decimal points.
Significance level at .05, 2-tailed, negative in shade.

The relationship between the officials’ expectational and jurisdictional

orientations was not perfect like that of the proprietors but still fairly strong. By the same rationale, how much further the officials expect administrative litigation to be developed is related with and affected by what they conceive the institution to do. Spearman's rho correlation coefficients between the two orientations varied from 0.17 to 0.37 (see Table 7.12 above). The only jurisdictional orientation question that had answers with no significant correlation with the expectational orientation responses was question 17 about the abstract administrative act of unreasonable regulation. It does reflect the greater reservation among the officials concerning unreasonable regulation as a ground for litigation by the ruled.

The evaluational orientation of the officials was the only one to have a perfect relationship with their expectational orientation. As mentioned earlier, likely immediate effects and estimated long-term development of administrative litigation are two inseparable issues. Spearman's rho correlation coefficients for these two orientations of the officials were even higher than that of the proprietors, reaching 0.22 to 0.53, meaning that the perfect relationship was pretty strong as well. In particular, answers to the first four evaluational orientation questions 19-22 about direct correctional effects of administrative litigation, were much more strongly

correlated with the officials' expectational orientation responses than that of the last two evaluational orientation questions about the less direct positive effects of administrative litigation on the government. This further suggests that effects that are more immediately and directly related with the institution of administrative litigation, like protecting citizens' legal rights and interests, will have a stronger relationship with and implication on the expectation outlook for the institution.

Unlike the case of the proprietors where a strong correlation was found, the officials' appraisal and expectational orientations were barely correlated. Only five cases of correlation were found. The Spearman's rho correlation coefficients among them were -0.17 to -0.24. The officials' expectation on administrative litigation seems to be little related with and barely dependent upon their rating on the latter's present usefulness.

4. Expectational Orientation among Different Sub-Groups of Officials

Analysis of the officials' expectational orientation responses by means of cross-tabulation shows that almost all of their personal particulars have no significant

relationship with their expectational orientation, except for the personal particular of income where a slightly significant relationship is found (see Table 7.13 below, details of the extensive cross-tabulation results are not displayed due to space constraints).

Table 7.13 Relationship between the Officials’ Expectational Orientation and Personal Particulars

Level of Relationship	Personal Particulars
Insignificant	Gender Age Political Status Working Years Department Working District Education Level
Slightly Significant	Income

Sub-Groups with Insignificant Relationship

Like the proprietors, the officials also displayed high level of consensus in supporting further development of administrative litigation, no matter for advancing reform and opening, protecting citizens’ rights or strengthening rule of law in the country. Differences in their gender, age, political status, working years, department, working district, and education level all produced no visible difference in their expectational orientation. Yet, incidental variations did exist, e.g. the female officials

were much more ready to support furthering administrative litigation for the reason of better protecting citizens’ rights and interests, and Hygiene officials were a bit more doubtful about the connection between developing administrative litigation and advancing the reform and opening. Yet, such variations were not a significant challenge to the consistency in the officials’ expectational orientation. Alike the cross-tabulation analysis, the correlation analysis also generated no significant findings on the relationship between the officials’ expectational orientation and their personal particulars (see Table 7.14 below).

Table 7.14 Correlation Coefficients for the Officials’ Expectational Orientation and Personal Particulars

Expectational Orientation Question	Gender	Age	Political Status	Working Years	Department	Working District	Income	Education Level
33								
34								
35								
36								
37								

Phi for gender, Spearman’s rho for age, working years, income & education level.
Cramer’s V for political status, department & working district.
Significance level at .05, 2-tailed.

In respect of the last two expectational orientation questions, more variations

were noted. Significantly less of the eldest officials between 41-50 concurred with judicial independence as important for further development of administrative litigation. On the opposite, there were significantly more with such belief among officials working in Xi Cheng district. Officials who were politically independent had a significantly higher percentage endorsing judicial independence but significantly lower percentage expecting a bright future for administrative litigation. Finally, officials working with the Fire Services and Environmental Protection departments had a significantly lower percentage agreeing with the necessity of judicial independence as well as the likelihood of a bright future. However, all these variations are more incidental than common, hence cannot be taken to infer a significant relationship between related personal particulars of the officials and their expectational orientation.

Sub-Group with Slightly Significant Relationship

Only monthly income of the officials was found to have a slightly significant relationship with their expectational orientation because one of the sub-groups had answers different from the group norm in all five expectational orientation questions. While the lower income sub-groups had similar responses to all expectational

orientation questions, following largely the group norm in general, the highest income sub-group, hence the most senior or most high ranking sub-group, answered quite differently. They had a significantly lower percentage of supportive answers to the first three expectational orientation questions and to the last one, implying a weaker expectation on administrative litigation and less certainty with a bright future for the latter. However, the highest income sub-group had a slightly higher percentage agreeing with the importance of judicial independence for further development of administrative litigation. After all, the higher income and higher ranking officials appears to be more prudent and pragmatic, less inclined to project optimistic expectations on administrative litigation.

Based on the above findings, it may be said that the officials' strong faith and high hope in the future of the PRC's administrative litigation are a common expectational orientation shared by almost all the interviewed officials, independent of their personal background and particulars.

D. Summary

Further development of the PRC's administrative litigation will not be possible if the many obstacles and constraints faced by the institution are not removed. Those obstacles are complex and multiple, concerning the Law, the ruled, the rulers, as well as the courts. If the PRC's administrative litigation is to be further developed, many works need to be done and those works are neither simple nor easy. Piecemeal solutions will not help. An integrated program is needed. A comprehensive list of the more essential steps and urgent tasks is suggested in this chapter not for selective or random implementation but for concerted action, else the effect will be very much undermined.

Despite the arduous works ahead, further developing the PRC's administrative litigation is the common expectation of both the Chinese ruled and rulers. Notwithstanding their position difference in administrative litigation, continuation and further growth of the institution is undisputed by both parties when different advantages of the institution are counted. In fact, the rulers sample's expectational orientation is even better than the ruled sample's. The interviewed rulers have

stronger hope for further developing administrative litigation not for self-interest but for the benefit of society as a whole. Besides, they are less idealistic and more rational than the ruled in their expectation, with a greater percentage realising the difficulties lying ahead and the necessity of judicial independence as a prerequisite. Such expectational comments are too radical to be a simple reiteration of the official standpoint but can only be the rulers sample's personal and genuine ideas. To sum up the two parties' expectational orientation in response to the sixth research question of how the ruled and rulers expect the future of administrative litigation, it is obvious that both parties strongly believe that administrative litigation should be further developed and they have solid grounds for such conviction.

In addition, the two parties' expectational orientations are highly consistent, both with a perfect internal relationship among their different expectational comments, indicating the two parties' agreeing ideas about the future of the PRC's administrative litigation. The external relationship of the ruled sample's expectational orientation is stronger than that of the rulers sample, suggesting that expectational orientation is more an integral part of the administrative litigation culture of the ruled than the rulers. For both the ruled and rulers samples,

expectational orientation is more closely related in ascending order with appraisal, jurisdictional and evaluational orientations. To reiterate, conceived scope of jurisdiction, estimated immediate consequences, rated usefulness, and estimated future prospects for administrative litigation are found to have a consequential relationship in both the ruled and rulers' administrative litigation culture.

Finally, the rulers' expectational orientation is little affected by their personal background and particulars whereas such effect are relatively more significant with respect of the ruled. Working years, residency and education level are closely tied with the expectational orientation of the sampled ruled. On the contrary, the rulers sample's supportive expectational orientation is commonly shared by almost all members disregard their gender, age, political status, seniority, position, etc. It reaffirms that the rulers' expectational orientation is more well considered and grounded, with more rationality and less effect of their individual characteristics.

Chapter 8 Conclusion and Recommendations

Contemporary China is experiencing tremendous changes that scholarly studies have not been able to fully keep track of. One example is the introduction of the PRC's administrative litigation ten years ago, which has brought about important changes to the Chinese legal system and ruled-rulers relationship but has not been seriously researched before. The purpose and contribution of this thesis is in reducing this gap in our knowledge and in enhancing our understanding of the PRC's administrative litigation. This thesis presents the first major research on the PRC's administrative litigation.

Besides being a macroanalysis of the PRC's administrative litigation, this thesis is more specifically a microanalysis of the Chinese ruled and rulers' administrative litigation culture. By expanding and improving previous cultural study methods, this thesis constitutes a multi-dimensional and full-blown cultural study of the PRC's administrative litigation. The extensive findings of both analyses have been reported and discussed in the previous chapters. All things considered, the entire thesis will be concluded in this chapter and recommendations on the subject will also be given.

A. Conclusion

By examining the pattern of orientations, i.e. administrative litigation culture, within which the PRC's administrative litigation is embedded, this thesis explicates the larger cultural background within which the structure and actions of administrative litigation exist. At the same time, this thesis also looks back into the structure and problems of the PRC's administrative litigation through apprehension of its larger cultural background. In the end, a confined and underdeveloped administrative litigation is found to exist within a receptive but discontented cultural background.

1. Macroanalysis of the PRC's Administrative Litigation

A clear-cut dichotomy marks the Chinese ruled-rulers relationship whether in the ancient, feudal or socialist period. The rulers uphold their rule in the name of the heaven, national survival, common good, communism, etc., even if ruling for themselves in all respects. The ruled accept being ruled with little realisation of their individual rights, little objection to the ruler's exploitation, and little interest to rule.

The law, if used, is usually a tool initiated and employed by the rulers to protect their rule and to strengthen the dichotomy. The law has seldom been a shield put up by the ruled to safeguard their rights against the rulers' infringements. Rule of law in its modern Western meaning is unknown to most Chinese and underdeveloped in this oriental state. That accounts for the late arrival of administrative litigation in China and in the PRC (see "Rationale" in chapter one).

Due to the entrenched dichotomy between the Chinese ruled and rulers and the age-old subordination of the Chinese ruled to rule of the rulers, any major change in the two parties' relationship can hardly be originated by the ruled from below. The PRC's administrative litigation, introduced for the first time in the mainland after long delay in 1989, is both a concession and a contrivance of the PRC's rulers. It is a concession of the rulers made necessary by their loss of legitimacy in the Cultural Revolution and their decline in popularity resulting from endemic administrative improprieties. It is a contrivance of the rulers amid both these legitimacy and popularity crises to strengthen and prolong their rule after serious misrule in the past. As a result, the PRC's administrative litigation has always suffered from a dilemma, from its design to its implementation – whether to protect the rights and interests of

the ruled or to promote the rulers' rule. Since the rulers dictate the whole exercise from above, with little participation of ruled, the PRC's administrative litigation is basically a reflection of the rulers' will and needs and it has always been a confined concession. Provisions in the PRC's Administrative Litigation Law are full of such limitations, e.g. the rulers only allow those members of the ruled who are under their administrative control to sue, only their administrative offices to be sued, and only their specific administrative acts to be challenged (see first two sections of chapter two).

Besides the innate bias and limitations, the PRC's administrative litigation is also faced with many operational difficulties. By and large, the political reality and legal establishment in the mainland are not conducive to the implementation of administrative litigation and the Chinese rulers have not attempted to make the environment more facilitating when they deliver the institution. Almost all concerned parties are not ready and not prepared for administrative litigation. The ruled are not used to taking legal actions, confronting the rulers, and protecting their interests. The rulers are not used to answering to the ruled, examination by the courts, and abiding by the laws. The courts are not well established enough to try the

rulers, carry through justice, and execute administrative litigation. These explain why the PRC's administrative litigation has gone through a difficult ten years and its development is still limited (see first two sections of chapter three).

Another proof of a confined concession and reason for limited development with regard to the PRC's administrative litigation is the latter's confusing and restricted scope of jurisdiction. The PRC's rulers resolve to minimise the institution's scope of review and challenge on their administrative actions but want their establishment to be seen as maximal as possible. This makes the provisions of the PRC's Administrative Litigation Law very much misleading and mutually conflicting, with generous promise first but then disappointing restrictions later. In the end, the scope of protection only covers infringement on the *personal* and *property* rights of the ruled by *unlawful* specific administrative acts and *clearly unjust* sanctions of the rulers. All other acts of infringement by the rulers, such as wrongful policies and unreasonable demands, on all other kinds of rights of the ruled, such as political and social rights, are denied even the chance to argue in open court. This curbs the effort to protect the rights and interests of the Chinese ruled and the growth of administrative litigation in the mainland (see first two sections of chapter

four).

As a result of the institution's innate bias, implementational difficulties, and restricted jurisdiction, the immediate effects and benefits of the PRC's administrative litigation are no less biased and restricted. In principle, the PRC's administrative litigation can bring wide-ranging consequences. It can help protect the rights and interests of the ruled, correct administrative improprieties of the rulers, improve the rulers' administration, ameliorate the ruled-rulers relationship, strengthen the legal system, enhance the rule of law, maintain social stability, and promote economic development. But in actuality, the PRC's administrative litigation has not been doing its best and has been benefiting the rulers more than the ruled. For example, the courts are required to help enforce the rulers' administrative decisions on the ruled, the rulers' liability to compensate the ruled for damage caused to the latter is very much limited, and the responsible officials for wrongful acts are basically left unpunished (see first two sections of chapter five).

Under a confined and hostile environment, the practical usefulness of the PRC's administrative litigation is also jeopardised. The long-established and

recently strengthened formal complaint channel of administrative reconsideration is designated by the rulers to precede and preempt the use of administrative litigation. Other informal and even illegal means, like using personal connection and money, are also common substitutes for administrative litigation in the mainland for the resolution of disputes and management of conflicts between the ruled and the rulers. Besides, the courts' inadequacies in executing administrative litigation also reduces the latter's effectiveness in terms of monitoring the rulers' actions and protecting the interests of the ruled. Finally, the ruled may face many practical difficulties in the pursuit of administrative litigation, e.g. the skills, time and money needed for suing the rulers, the risk of making enemies among local officials, and the possible retaliatory actions of the rulers, which are more than sufficient to make the ruled regard the PRC's administrative litigation not as helpful and useful as it is proposed or expected (see first two sections of chapter six).

A bright future for the PRC's administrative litigation can hardly be possible if nothing is done on the above problems and limitations. The first section of chapter seven provides comprehensive suggestions in four major aspects for further development of the PRC's administrative litigation. Firstly, seven articles of the

PRC's Administrative Litigation Law should be amended to clarify and expand the purpose and scope of the PRC's administrative litigation. Secondly, user-oriented promotion and assistance should be given to members of the ruled to bring the PRC's administrative litigation to the ruled as well as the ruled to the institution. Thirdly, elaborate training and improvement measures should be implemented on members of the rulers to remove their resistance to administrative litigation, build up their respect for the law, rationalise their self-legislated administrative rules, and punish their damage to administrative litigation by retaliatory actions. Finally, the courts should also be strengthened by separating the judiciary from the administration, building a professional team of administrative litigation judges, and reforming the hearing system. All these four aspects are inter-related and improvement efforts should not miss out any one of these aspects.

In summary, the PRC's administrative litigation is very much confined and underdeveloped even after ten years of implementation. Its initial design has been limited by the will and needs of the PRC's rulers and its subsequent implementation has been hindered by many operational difficulties and practical problems. However, that does not mean that the PRC's administrative litigation is not welcomed and

supported by the people in the mainland. In fact, a receptive and endorsing cultural environment for administrative litigation is present. Besides, it is obvious that the present confined administrative litigation is lagging behind people's expectations, especially for the ruled in the PRC.

2. Microanalysis of the Ruled and Rulers' Administrative Litigation Culture

The microanalysis of the Chinese ruled and rulers' administrative litigation culture in this study makes use of the past political culture model but adds to the latter three more constituent orientations because of this study's uniqueness and the past model's inadequacy. Cognitive and affective orientations used in the past are lucid and indispensable but evaluational orientation is too broadly used for precise discourse. Evaluational orientation is, hence, specified in this study to refer to comments on the immediate consequences of administrative litigation only while comments on the empirical usefulness of administrative litigation is grouped under a new appraisal orientation. Another new expectational orientation is added to cover beliefs about the future development of administrative litigation. Finally, unique for this study is jurisdictional orientation, which embraces ideas about the appropriate

scope of jurisdiction for administrative litigation. It is believed that only by examining these six orientations can a multi-dimensional and full-blown legal culture study be then possible (see “Theoretical Framework” in the first chapter for details).

The six cultural orientations of the surveyed Chinese ruled and rulers towards the PRC’s administrative litigation are reported and discussed in chapters two to seven, respectively. By summing up and integrating individual findings in the six orientations, we can find out the two parties’ overall administrative litigation culture, which is the seventh and final research question of this study. In essence, it is found that both the surveyed Chinese ruled and rulers have a well established administrative litigation culture based on consistent and clearly defined constituent orientations. Unfriendly and disapproving comments are much less common than receptive and supportive attitudes. However, the basic configuration as well as personal variation of the two parties’ administrative litigation cultures are quite different and their ultimate administrative litigation cultures are also different.

Using the overall administrative litigation orientation scores of the two samples

as a reference, members of the ruled and rulers display quite different administrative litigation orientations, resulting in quite different administrative litigation cultures (see Table 8.1 below). Cognitive orientation of the ruled is limited, passive and incoherent whereas that of the rulers is more deep-set, proactive and solid (see second half of chapter two for details). Affective orientation of the ruled is largely positive and supportive but not particularly strong whereas that of the rulers is even more positive and endorsing, clearly in support of the official establishment (see second half of chapter three for details). Jurisdictional orientation of the ruled is divided among their members but the majority is basically idealistic and unreserved with the idea of a full scope of protection under administrative litigation. On the contrary, jurisdictional orientation of the rulers is more realistic and alike the existing provision with little dispute against judicial review on the legality of their administrative acts but greater reluctance about that on abstract administrative acts (see second half of chapter four for details).

Table 8.1 Overall Orientation Scores of the Two Samples by Percentage plus Remarks*

	Proprietors					Officials				
	Yes		No		Remarks	Yes		No		Remarks
	A	N	D	?		A	N	D	?	
Cognitive orientation	49.7		50.3		Limited	72.9		27.1		More deep-set
Affective orientation	19.5	12.5	56.9	11.1	Supportive	9.9	6.8	82.2	1.1	Endorsing
Jurisdictional orientation	64.5	8.0	19.8	7.7	Idealistic	78.2	8.9	10.4	2.5	More realistic
Evaluational orientation	87.6	5.8	3.6	3.0	Ruled-oriented	88.5	7.0	3.8	0.7	Ruler-oriented
Appraisal orientation	35.8	18.6	35.3	10.3	Disappointed	21.0	21.7	54.7	2.6	Defending
Expectational orientation	82.8	6.4	3.1	7.7	Optimistic	89.3	7.1	1.6	2.0	Promising

A = Totally agree and agree; N = Neutral; D = Totally disagree and disagree; ? = Don't know.

* The figures are reproduced from respective tables in chapters two to seven.

Evaluational orientation of the ruled and rulers are similar on the level they acclaim and agree with the potential consequences of administrative litigation but both parties equally display a self-oriented inclination, i.e. more concern with those effects that have direct relationship with their own interests (see second half of chapter five for details). Appraisal orientation of the ruled is much lower and more negative than their other orientations, showing noticeable disappointment and reservation with the usefulness of administrative litigation whereas that of the rulers is more affirmative and defending, with a tendency to gloss over the institution's limitations (see second half of chapter six for details). Finally, expectational orientation of the ruled is very much optimistic and instinctive whereas that of the

rulers is highly promising regarding their establishment and more prudent with greater recognition of the difficulties ahead (see chapter seven for details).

As a whole and in general, members of the ruled tend to have a limited, supportive, idealistic, ruled-oriented, disappointed, but largely optimistic administrative litigation culture. In contrast, members of the rulers tend to have a more deep-set, endorsing, more realistic, ruler-oriented, defending, and promising administrative litigation culture. In comparison, we cannot say that the rulers have a better administrative litigation culture but just that the two parties' administrative litigation cultures are ultimately different, reflecting and related with their respective background, position, and needs. After all, the administrative litigation cultures of both parties are comparably receptive and endorsing towards the PRC's administrative litigation.

Whatever the difference, whether positive or negative, it is beyond doubt that both the surveyed ruled and rulers have well established administrative litigation culture based on clearly defined and consistent administrative litigation orientations. On the one hand, both the ruled and rulers tend to have a low level of neutral and

unknown answers, except for the appraisal orientation, indicating basically clearly defined constituent orientations in support of their respective administrative litigation culture (see Table 8.1 above). On the other hand, the two parties' clearly defined constituent orientations are also highly consistent and coherent as indicated by the high level of internal relationship for all orientations except the first cognitive orientation (see shaded boxes in Table 8.2 and 8.3 below). In a word, the administrative litigation culture of both the ruled and rulers are well grounded and established with consistent and clear orientations for meaningful analysis.

Table 8.2 Internal and External Relationship of the Proprietors' Administrative Litigation Orientations*

	Cognitive Orientation	Affective Orientation	Jurisdictional Orientation	Evaluational Orientation	Appraisal Orientation	Expectational Orientation
Cognitive orientation	Slight	Very Strong	Fairly Strong	Slight	Fairly Strong	Slight
Affective orientation	Very Strong	Strong	Small	Slight	Fairly Strong	Small
Jurisdictional orientation	Fairly Strong	Small	Perfect	Very Strong	Very Strong	Perfect
Evaluational orientation	Slight	Slight	Very Strong	Perfect	Small	Perfect
Appraisal orientation	Fairly Strong	Fairly Strong	Very Strong	Small	Perfect	Very Strong
Expectational orientation	Slight	Small	Perfect	Perfect	Very Strong	Perfect

* Summarised from respective tables in chapters two to seven. Internal relationship in shade.

Table 8.3 Internal and External Relationship of the Officials’ Administrative Litigation Orientations*

	Cognitive Orientation	Affective Orientation	Jurisdictional Orientation	Evaluational Orientation	Appraisal Orientation	Expectational Orientation
Cognitive orientation	Slight	Small	Small	Small	Small	Small
Affective orientation	Small	Strong	Small	Fairly Strong	Fairly Strong	Fairly Strong
Jurisdictional orientation	Small	Small	Perfect	Very Strong	Small	Fairly Strong
Evaluational orientation	Small	Fairly Strong	Very Strong	Perfect	Small	Perfect
Appraisal orientation	Small	Fairly Strong	Small	Small	Very Strong	Small
Expectational orientation	Small	Fairly Strong	Fairly Strong	Perfect	Small	Perfect

* Summarised from respective tables in chapters two to seven. Internal relationship in shade.

However, the underlying configuration of the two parties’ administrative litigation culture is quite different. Administrative litigation culture of the ruled has a clearly higher level of internal coherence and unity, with their six administrative litigation orientations significantly correlated with one another (see Table 8.2 above). Within that coherent administrative litigation culture, the jurisdictional orientation plays the most integral and important role in shaping the overall administrative litigation culture of the ruled. To a lesser extent, the evaluational and appraisal orientations are also significant. For example, the expectational orientation of the ruled towards the PRC’s administrative litigation is statistically tied with and probably dependent upon their jurisdictional, evaluational, and appraisal orientations. On the contrary, the rulers’ administrative litigation culture is much more discrete

and divided, with each constituent orientation quite separated from the others and none playing a distinctly more important role in the configuration of their overall administrative litigation culture (see Table 8.3 above).

In addition, personal variation in the ruled and rulers' administrative litigation culture is also different. For members of the ruled, the extent of variations in their administrative litigation culture according to their personal particulars is pretty high, suggesting a personal and original inclination in their culture. In contrast, the same is much lower among the rulers, indicating a more impersonal and standardised tendency in the rulers' administrative litigation culture. In particular, education level is the most important personal factor among the ruled with a significantly positive relationship with their administrative litigation culture. The next most important personal factor for the ruled is residency, followed by age, working years and political status (see Table 8.4 below). In contrast, the rulers' administrative litigation culture is not very significantly related with their personal particulars (see Table 8.5 below). For both the ruled and rulers, jurisdictional orientation is the one with the greatest personal variation and gender is the least important personal factor with the lowest level of relationship with their respective administrative litigation culture.

Table 8.4 Relationship between the Proprietors' Administrative Litigation Orientations and Personal Particulars

	Cognitive Orientation	Affective Orientation	Jurisdictional Orientation	Evaluational Orientation	Appraisal Orientation	Expectational Orientation
Gender	--	--	--	--	★	--
Age	✓	★	★	✓	★	✓
Political Status	✓	--	★	★	✓	✓
Working Years	--	✓	★	✓	✓	★
Kind of Business	--	★	✓	--	✓	✓
Residency	★	--	★	--	★	★
Working District	--	--	★	--	★	✓
Income	✓	✓	✓	✓	--	--
Education Level	★	★	★	★	--	★

-- = Insignificant

✓ = Slightly Significant

★ = Significant

Table 8.5 Relationship between the Officials' Administrative Litigation Orientations and Personal Particulars

	Cognitive Orientation	Affective Orientation	Jurisdictional Orientation	Evaluational Orientation	Appraisal Orientation	Expectational Orientation
Gender	✓	✓	✓	--	--	--
Age	✓	★	★	--	--	--
Political Status	--	✓	★	--	✓	--
Working Years	✓	★	★	--	✓	--
Department	★	--	--	--	✓	--
Working District	★	--	★	✓	✓	--
Income	--	★	✓	--	--	✓
Education Level	★	✓	★	--	★	--

-- = Insignificant

✓ = Slightly Significant

★ = Significant

B. Recommendations

1. Recommendations for Further Research

This is the first and pioneering study of the PRC's administrative litigation using the cultural approach, many successive and related researches are needed for a better and richer understanding of the subject. Similar researches on other members of the ruled, in other locations and at different time periods can contribute to a more accurate understanding and a comparative analysis of the Chinese populace's administrative litigation culture. The differences and similarities in administrative litigation culture of people in different countries and of different nationalities can also be compared by cross-country comparisons. Moreover, the relationship between administrative litigation culture and administrative litigation at different stages of development can also be tested by more successive cultural studies.

On the other hand, related researches on the PRC's administrative litigation using other approaches can expand our knowledge of the field and complement the cultural studies. Although the present study also looks into the structure and

problems of the PRC's administrative litigation, the formal set-up of the courts and the administration in respect of administrative litigation are still not examined fully enough and the concrete actions of the concerned parties in administrative litigation are barely studied. Studies on the PRC's administrative litigation using the institutional and behavioural approaches, if possible, will enrich our understanding in these aspects.

Besides, administrative litigation is just one aspects of the ruled-rulers relationship. Studies on other related issues, like the PRC's administrative reconsideration, the role of people's congress in protecting interests of the ruled and monitoring actions of the rulers, the use of *guanxi* and money in the management of conflict between the Chinese ruled and rulers, will all expand our understanding about the PRC's ruled-rulers relationship.

2. Recommendations for the Chinese Rulers

The setting up of administrative litigation is a revolutionary and daring initiative of the PRC's rulers, which may help them reach their contrivance to

sustain their rule, enhance their legitimacy, and promote their popularity. However, their resolution on a minimal concession can hardly bring them what they want but would rather defeat their intended purpose. The problems and difficulties encountered during the past ten years have vividly pointed out the insufficiency of the PRC's administrative litigation. For the benefit of the ruled as much as for the rulers, it is imperative that the institution be improved and uplifted from its underdeveloped condition. Dissonance between the populace's expectation and the present practice of the PRC's administrative litigation has to be remedied if the rulers do want to increase their legitimacy and popularity by such establishment. The ways to improve the PRC's administrative litigation were stated in the last chapter. In a nutshell, the return depends on the offer and the best offer is a fully-fledged administrative litigation package, not a deceiving and defensive concession.

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Notes to Chapter One

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 21. Montesquieu alludes the subordination of political institutions to dominant cultural norms by saying, "laws were the particular and precise institutions of a legislator, and manners and customs the institutions of a nation in general." *The Spirit of the Laws*, Thomas Nugent trans. (1949), New York, London: Macmillan, p.298.
 22. Jean-Jacques Rousseau also postulates a close relationship between the institutional regime and prevalent social norms: "In the same way as an architect, before constructing a large building, studies and probes the soil to see whether it will bear the weight, the wise creator of institutions will not begin by drafting laws good in themselves, but will first consider whether the people for whom they are intended is capable of receiving them." *The Social Contract*, Christopher Betts trans. (1994), Oxford: Oxford University Press, pp.79-80.
 23. Agreeing that political culture sustains political regime, Alexis de Tocqueville notes

that, "It is their mores, then, that make the Americans of the United States, alone among Americans, capable of maintaining the rule of democracy; and it is mores again that make the various Anglo-American democracies more or less orderly and prosperous. Europeans exaggerate the influence of geography on the lasting powers of democratic institutions. Too much importance is attached to laws and too little to mores. Unquestionably those are the three great influences which regulate and direct American democracy, but if they are to be classed in order, I should say that the contribution of physical causes is less than that of the laws, and that of laws less than mores. I am convinced that the luckiest of geographical circumstances and the best of laws cannot maintain a constitution in despite of mores, whereas the latter can turn even the most unfavorable circumstances and the worst laws to advantage." in Mayer, J.P. (ed.), *Democracy in America*, George Lawrence trans. (1966), New York: Harper & Row, p.308.

24. Max Weber says in his essay, *The Nature of Social Action*, "In interpreting action, the sociologist must take account of the fundamentally important fact that the collective concepts which we employ in our thinking, whether in legal or other specialist contexts or in everyday life, *represent* something: what they represent is something which in part actually exists and has a normative force in the minds of real men (not only judges and officials, but also the general public) whose actions take account of it. Because of this, they are of great, often absolutely vital, importance in giving a causal explanation of the way in which the actions of real human beings proceed." in Runciman, W.G. (ed.), *Max Weber. Selections in Translation*, E. Matthews trans. (1978), Cambridge: Cambridge University Press, p.17.
25. In his analysis of the Asian power and politics, Lucien Pye venerates the importance of cultural factors for understanding the political development and modernization of those Asian countries as "culture is helpful in mapping different routes of political development because it treats seriously the nuances in behavior patterns which may seem only trivial but which actually are critical in distinguishing between successes and failures. In the subtleties of cultures are to be found both the values a people seek and the obstacles that must be overcome if their goal is to be reached. By beginning with culture, therefore, we are allowing the different Asian peoples to define for themselves what they want with respect to modernization." *Asian Power and Politics. The Cultural Dimensions of Authority* (1985), Cambridge, Mass. & London: Harvard University Press, p.21.
26. Construction of the theoretical framework draws heavily from Almond, Gabriel A. & Sidney Verba (1963), *The Civic Culture: Political Attitudes and Democracy in Five Nations*, Princeton: Princeton University Press; Pye, Lucian W. & Sidney Verba (ed.)

(1965), *Political Culture and Political Development*, Princeton: Princeton University Press; Kavanagh, Dennis (1972), *Political Culture*, London: Macmillian; Inglehart, Ronald (1988), 'The Renaissance of Political Culture', *American Political Science Review*, 82(4), pp.1203-1230; Thompson, M., R. Ellis & A. Wildavsky (1990), *Cultural Theory*, Boulder: Westview Press; and Welch, Stephen (1993), *The Concept of Political Culture*, New York: St. Martin's Press.

27. Almond, Gabriel A. (1956), 'Comparative Political Systems', *Journal of Politics*, 18.
28. Almond & Verba, *op. cit.*, p.15.
29. Kavanagh, *op. cit.*, p.13.
30. Pye & Verba, *op. cit.*, pp.6-11.
31. *Hong Kong Economic Times*, 25 December 1998, p.A17.

Notes to Chapter 2

1. There was no statistic on the failure rate of administrative cases during the period, but interview respondent no. 4 (Beijing, June 1994) pointed out that it was indeed very high.
2. Interview, respondent no. 11, Beijing, June 1994.
3. The group was chaired by Professor Jiang Ping, president of the China University of Political Science and Law in Beijing, and was constituted by 12 other members including law professor Zhang You-yu of the same university, law professor Pi Chun-xie of Renmin University of China, law professor Zhang Huan-guang of the Chinese Academy of Social Sciences, professor Ying Song-nian of China Administrative College, law professor Luo Hao-cai of Peking University, and other law experts. Interview, respondent no. 17, Beijing, November 1995.
4. Interviews, respondents no. 11 & 17, Beijing, June 1994 & November 1995, respectively.
5. Interview, respondent no. 17, Beijing, June 1994.
6. Interview, respondent no. 11, Beijing, June 1994.
7. Interviews, respondents no. 11 & 17, Beijing, June 1994.
8. Interview, respondent no. 16, Beijing, June 1994.
9. Interview, respondent no. 10, Beijing, June 1994.
10. Interviews, respondents no. 10 & 11, Beijing, June 1994.

11. Interview, respondent no. 5, Beijing, June 1994.
12. Comment given by interview respondent no. 13, judicial official, Beijing, June 1994.
13. Interviews, respondents no. 36, 37 & 38, individual household proprietors, Beijing, October 1998. See also the results for question 11 about affective orientation of the interviewed proprietors in Chapter 3.
14. Non-parametric phi test is used as measure of correlation for the cognitive orientation questions because the type of answers provided is dichotomous (i.e. Yes or No).
15. Interview, respondent no. 37, individual household proprietor, Beijing, October 1998.
16. Interview, respondent no. 25, Beijing, October 1998.
17. Interview, respondent no. 12, government official, Beijing, June 1994.
18. Interview, respondent no. 29, government official, Beijing, October 1998.

Notes to Chapter 3

1. Ren Jian-xin, '1991 Work Report of the Supreme People's Court', *Public Report of the PRC Supreme People's Court*, 1991:2, p.46.
2. Interview, respondent no. 9, judicial official, Beijing, June 1994.
3. *Ibid.*
4. Discussion about the implementation problems of the PRC's administrative litigation draws heavily from interviews with respondents no. 5, 9, 10, 11, 12, 13, 14, 16, 20, 21, 27, and 37, Beijing, June 1994 to October 1998, and from mainland law journals *Zheng Fa Lun Tan* (Tribune of Political Science and Law), 1991:5, pp.53-57, 1997:4, pp.85-91, *Zhong Guo Fa Xue* (Chinese Legal Science), 1994:3, pp.51-56, 1995:1, pp.59-66, 1995:5, pp.62-66, 1997:4, pp.32-39, *Zhong Wai Fa Xue* (Peking University Law Journal), 1993:2, pp.65-68, 1994:1, pp.55-56, *Fa Xue Ping Lun* (Law Review), 1998:3, pp.1-20, *Xing Zheng Fa Xue Yan Jiu* (Studies in Administrative Law), 1995:4, pp.1-70, 1996:3, pp.34-35, *Fa Xue Jia* (Jurists' Review), 1998:1, pp.120-125, 1998:2, pp.97-99, *Ren Min Si Fa* (People's Judiciary), 1998:4, p.8, 1998:8, pp.6-8, and *Xing Zheng Yu Fa* (Public Administration and Law), 1998:5, pp.19-21.
5. Interviews, respondents no. 5 & 11, Beijing, June 1994.
6. Interviews, respondents no. 11 & 13, Beijing, June 1994.
7. Interviews, respondents no. 10 & 20, Beijing, June 1994.
8. Interviews, respondents no. 11, 20 & 21, Beijing, June 1994.

9. See Chen You-xi, 'Wo-guo Xing-zheng Fa-yuan She-zhi ji Xiang-guan Wen-ti Tan-tao', *Zhong Guo Fa Xue*, 1995:1, p.60.
10. Comment by interview respondent no. 37, individual household proprietor, Beijing, October 1998.
11. Interviews, respondents no. 5, 10 & 21, Beijing, June 1994.
12. Interviews, respondents no. 10, 12 & 20, Beijing, June 1994.
13. Interviews, respondents no. 5, 10, 11, 12 & 20, Beijing, June 1994. See also Chen You-xi, *op cit.*, p.60.
14. Interviews, respondents no. 5 & 20, Beijing, June 1994, as well as no. 27, Beijing, November 1995. See also Chen You-xi, *op cit.*, p.60.
15. Interview, respondent no. 5, Beijing, June 1994. See also Chen You-xi, *op cit.*, p.60.
16. Interviews, respondents no. 13, 20 & 21, Beijing, June 1994. See also Chen You-xi, *op cit.*, p.61.
17. Interviews, respondents no. 14 & 27, Beijing, June 1994 and November 1995, respectively.
18. Interview, respondent no. 21, Beijing, June 1994.
19. Interview, respondent no. 27, Beijing, November 1995.
20. Interviews, respondents no. 11 & 27, Beijing, June 1994 and November 1995, respectively.
21. Interview, respondent no. 21, Beijing, June 1994.
22. Interviews, respondents no. 16, 20 & 21, Beijing, June 1994.
23. Explanatory Note by the Supreme People's Court on May 29, 1991, paragraph 16.
24. *Ibid*, paragraph 19.
25. *Ibid*, paragraph 30.
26. See also *ibid*, paragraph 28.

Notes to Chapter 4

1. Interview, respondent no. 11, Beijing, June 1994.
2. Wei Zong and A Jiang, 'Xing-zheng Su-song Li-fa Yao-lun', *Zhong Guo Fa Xue*, 1988:6, pp.14-15.

3. Zhang Shu-yi (1992), *Chong-tu yu Xun-ze – Xing-zheng Su-song de Li-lun yu Shi-jian* (Conflict and Choice – The Theories and Practices of Administrative Litigation), Beijing: Shishi Publication, p.88; Xue Gang-ling, 'Xing-zheng Su-song Shou-an Biao-zhun Yan-jiu', *Fa Shang Yan Jiu*, 1998:1, p.39; and Liu Shan-chun, 'Xing-zheng Su-song Shou-an Fan-wei de Li-lun yu Shi-jian Tan-jiu', *Zheng Fa Lun Tan*, 1995:3, p.59.
4. Cui Wei, 'Bu-ke-shu de Ju-ti Xing-zheng Xing-wei Tan-jiu', *Xing Zheng Fa Xue Yan Jiu*, 1996:2, p.37; and Nan Tong Intermediate People's Administrative Court, *Xing Zheng Fa Xue Yan Jiu*, 1997:2, p.66.
5. See China Senior Judges Training Centre (1993), *Xing-zheng Shen-pan Shi-wu* (Practice on Administrative Hearing), Beijing: Beijing Normal University Press; Commission of Legislative Affairs under National People's Congress Standing Committee (1989), *Zhong-hua Ren-min Gong-he-guo Xing-zheng Su-song-fa Jiang-hua* (A Discourse on The PRC's Administrative Litigation Law), Beijing: China Democracy and Law Publication; Pi Chun-xie and Hu Jin-guang (ed.) (1993), *Xing-zheng Su-song-fa Jiao-cheng* (Teaching Materials on the Administrative Litigation Law), Beijing: China People's University Press; Luo Hao-cai and Ying Song-nian (ed.) (1990), *Xing-zheng Su-song Fa-xue* (Legal Science of Administrative Litigation), Qinhuangdao: China Administration and Law University Press.
6. Discussion about the difficulties with defining the scope of protection draws heavily from mainland law journals *Zheng Fa Lun Tan* (Tribune of Political Science and Law), 1990:2, pp.35-40 & 78, 1991:5, pp.53-57, 1992:2, pp.62-66, 1995:3, pp.54-59; *Zhong Guo Fa Xue* (Chinese Legal Science), 1989:3, pp.11-17, 1993:1, pp.60-64 & 59, 1993:4, pp.62-68, 1994:2, pp.67-70, 1998:2, pp.45-52; *Xing Zheng Fa Xue Yan Jiu* (Studies in Administrative Law), 1996:2, pp.37-41, 1997:2, pp.16-21, pp.66-70; *Fa Xue Yan Jiu* (CASS Journal of Law), 1992:6, pp.35-39, 1993:1, pp.44-50; *Zhong Wai Fa Xue* (Peking University Law Journal), 1994:2, pp.17-19; *Fa Lu Ke Xue* (Law Science), 1996:6, pp.19-23, 1997:4, pp.33-39; and *Fa Shang Yan Jiu* (Studies in Law and Business), 1998:1, pp.39-46.
7. Explanatory Notes by the Supreme People's Court on December 1, 1992, paragraph 4 and November 24, 1993, paragraph 14.
8. Nan Tong Intermediate People's Administrative Court, *op cit.*, p.68.
9. Article 43(3) of the Patent Law; Article 21, 22 & 35 of the Trademark Law; Article 13 of the Law Governing Assembly, March and Demonstration; Article 29 of the Law on Management of Foreign Nationals Entering and Leaving the Country; and Article 15 of the Law on Management of Chinese Citizens Entering and Leaving the Country.

Notes to Chapter 5

1. Discussion on the consequences draws heavily from mainland law journals *Zhong Guo Fa Xue* (Chinese Legal Science), 1989:3, pp.3-10, 1990:5, pp.17-23, pp.24-28, 1995:5, pp.62-66, and *Xing Zheng Fa Xue Yan Jiu* (Studies in Administrative Law), 1995:4, pp.2-4, pp.12-13, and pp.20-23 & 4.
2. Gu Ang-ran, 'Xing-zheng Su-song-fa de Zhi-ding tui Wo-guo She-hui Zhu-yi Min-zhu Zheng-zhi he Fai-zhi Jian-she you Zhong-da Yi-yi', *Zhong Guo Fa Xue*, 1989:3, pp.3-5, Huang Jie, 'Shen-pan Ji-quan wei Guan-che Shi-shi Xing-zheng Su-song-fa er Lao-li', *Zhong Guo Fa Xue*, 1990:5, p.18, and Gao Shu-de, 'Xing-zheng Su-song-fa Shi-shi Wu-nian de Hui-gu', *Xing Zheng Fa Xue Yan Jiu*, 1995:4, pp.21-22.
3. Gao Xing-zheng, 'Lun Xing-zheng Shen-pan Gong-zuo yu Gai-ge Fa-zhan Wen-ding de Guan-xi', *Zhong Guo Fa Xue*, 1995:5, p.62.
4. Peng En-gang, 'Xing-zheng Ji-guan Ru-he Guan-che Shi-shi Xing-zheng Su-song-fa', *Zhong Guo Fa Xue*, 1990:5, p.25, and Gao Shu-de, *op. cit.*, p.22.
5. Huang Jie, *op. cit.*, p.18, Peng En-gang, *op. cit.*, p.25, and Gao Xing-zheng, *op. cit.*, p.63.
6. *Ibid.*
7. Huang Jie, *op. cit.*, p.18, Gao Xing-zheng, *op. cit.*, p.63, and Gao Shu-de, *op. cit.*, p.22.
8. Huang Jie, *op. cit.*, p.18 and Peng En-gang, *op. cit.*, pp.25-26.
9. Huang Jie, *op. cit.*, pp.17-18 and Gao Xing-zheng, *op. cit.*, pp.63-64.
10. Gao Shu-de, *op. cit.*, p.21.
11. Gao Xing-zheng, *op. cit.*, p.64.
12. Huang Jie, *op. cit.*, p.18.
13. Gao Xing-zheng, *op. cit.*, p.63 and Gao Shu-de, *op. cit.*, p.21.
14. Gao Shu-de, *op. cit.*, p.22.
15. Gu Ang-ran, *op. cit.*, pp.5-7, Huang Jie, *op. cit.*, p.18, Peng En-gang, *op. cit.*, p.25, and Pi Chun-xie, 'Yi-yi Zhong-da Yao-kao Bu-zhe Bu-kou de Shi-shi', *Xing Zheng Fa Xue Yan Jiu*, 1995:4, p.13.
16. Explanatory Note by the Supreme People's Court on May 29, 1991, paragraph 87.
17. Gao Xing-zheng, *op. cit.*, p.63.
18. Xue Gang-ling, *op. cit.*, p.39.
19. *Ibid*, pp.46-47.

20. Fang Shi-rong, 'Wei-fa Ju-ti Xing-zheng Xing-wei zhong de Ge-ren Yin-su ji Ze-ren Tan-tao', *Zhong Guo Fa Xue*, 1994:3, pp.48-49.
21. Article 5(6) of the People's Court Litigation Fees Collection Method, June 29, 1989.
22. Explanatory Note by the Supreme People's Court on May 29, 1991, paragraph 114.

Notes to Chapter 6

1. Those laws and regulations cover administrative acts relating to taxation, collection of customs duties, punishments by public security agents, labour employment with state-owned enterprises, state acquisition of agricultural products, etc.
2. White, Gordon (1996), 'Corruption and the Transition from Socialism in China', *Journal of Law and Society*, 23:1, pp.149-169.
3. For studies on the Chinese concept of *guanxi*, see Jacobs, J. Bruce (1980), *Local Politics in a Rural Chinese Cultural Setting: A Field Study of Mazu Township, Taiwan*, Canberra: Australian National University; Pye, Lucian W. (1992), *The Spirit of Chinese Politics*, Cambridge: Harvard University Press; and idem (1981), *The Dynamics of Chinese Politics*, Cambridge: Oelgeschlager, Gunn & Hain. For studies on the function of *guanxi* in China, see Christiansen, Flemming & Shirin Rai, *op. cit.*, pp.247-249.
4. Jacobs, J. Bruce, *op. cit.*, p.41.
5. Pye, Lucian W. (1992), *op. cit.*, p.207.
6. Jacobs, J. Bruce, *op. cit.*, p.53.
7. Christiansen, Flemming & Shirin Rai, *op. cit.*, p.248.
8. For study on the Chinese bureaucratic corruption, see Gong, Ting (1994), *The Politics of Corruption in Contemporary China: An Analysis of Policy Outcomes*, Westport: Praeger. For study on the Chinese corruption in general, see Kwong, Julia (1997), *The Political Economy of Corruption in China*, Armonk: M.E. Sharpe.
9. Liu Tai-shan, 'Tan Xing-zheng Fu-yi Guan-xia Gui-ding de Bi-duan', *Fa Xue Yu Shi Jian*, 1994:2, p.17.
10. Explanatory note by the Supreme People's Court on 29 May 1991, paragraphs 31, 32, 41, 44 & 45.

Notes to Chapter 7

1. Discussion on the improvement suggestions draws heavily from mainland law journals

Zhong Guo Fa Xue (Chinese Legal Science), 1995:1, pp.59-66; *Xing Zheng Fa Xue Yan Jiu* (Studies in Administrative Law), 1995:4, pp.9-10, pp.24-25, pp.33-39, 1996:3, pp.24-28, pp.44-49; *Zheng Fa Lun Tan* (Tribune of Political Science and Law), 1995:1, pp.58-62; *Zheng Fu Fa Zhi* (Government Legislation), 1996:5, pp.4-7; *Xing Zheng Yu Fa* (Public Administration and Law), 1998:3, pp.53-55, 1998:5, pp.19-21; and *Fa Xue Jia* (Jurists' Review), 1998:1, pp.120-125, 1998:2, pp.97-99.

2. See Chen You-xi, *op. cit.*, pp.59-66; Zhang Zhi-yong, 'Shi-xi Wo-guo Xing-zheng Su-song de Xian-zhuang ji Dui-ce', *Xing Zheng Fa Xue Yan Jiu*, 1995:4, pp.33-39; Bao Wan-chao, 'Min-gao-guan: Zhong-guo de Xian-zhuang, Kun-huo yu Gai-ge', *Zheng Fu Fa Zhi*, 1996:5, pp.4-7; and Peng Gui-cai, 'Xing-zheng Su-song Zhi-du de Wan-shan yu Fa-zhan', *Xing Zheng Yu Fa*, 1998:5, pp.19-21.

Appendix 1 The PRC's Administrative Litigation Law

Chapter 1 : General Provisions

Article 1 This Law is formulated in accordance with the Constitution in order to ensure the just and prompt hearing of administrative cases by the people's courts, protect the lawful rights and interests of citizens, legal persons and other organizations and uphold and supervise administrative authorities in exercising their administrative authority in accordance with law.

Article 2 Citizens, legal persons or other organizations shall have the right to bring proceedings in a people's court in accordance with the provisions of this Law against administrative authorities or their work personnel whose specific administrative acts have, in the opinion of the citizens, legal persons or other organizations, infringed upon their lawful rights and interests.

Article 3 The people's courts shall, in accordance with law, exercise the right to adjudicate administrative cases independently and shall not be subject to interference by administrative authorities, social groups and individuals. The people's courts shall establish administrative tribunals to hear administrative cases.

Article 4 In hearing administrative cases, the people's courts shall take facts as their basis and law as their criterion.

Article 5 In hearing administrative cases, the people's courts shall conduct examination of the legality of specific administrative acts.

Article 6 In hearing administrative cases, the people's courts shall, in accordance with law, implement a system in which there is a collegiate system and withdrawal, adjudication is conducted in public and the second instance shall be the final instance.

Article 7 Parties shall have equal legal status in administrative proceedings.

Article 8 Citizens of every ethnic group shall have the right to conduct administrative proceedings in their native spoken and written languages.

In areas inhabited by a concentrated minority ethnic group or by several ethnic groups, the people's courts shall use the spoken and written language in common use in the locality in conducting hearings and in issuing legal documents.

The people's courts shall provide translation for participants in proceedings who are not proficient in the spoken and written language commonly used by ethnic groups in the locality.

Article 9 Parties shall have the right to conduct debate in administrative proceedings.

Article 10 The people's procuratorates shall have the right to carry out legal supervision over administrative proceedings.

Chapter 2 : Scope of Acceptance of Cases

Article 11 The people's courts shall accept and hear proceedings in which citizens, legal persons and other organizations disagree with the following specific administrative acts:

- (1) administrative penalties such as detention, fines, cancellation of permits and licenses, orders to cease production or business; or confiscation of property;
- (2) coercive administrative measures such as restriction of personal freedom or the sealing up, seizing or freezing of property;
- (3) infringement by administration authorities of their operational autonomy that is stipulated by law;
- (4) either rejection of or no reply by administrative authorities to an application to administrative authorities for the issuance of permits and licenses, despite compliance with the legal requirements for application;
- (5) either rejection of or no reply by administrative authorities to an application for performance of the legal responsibility of the administrative authorities to protect personal and property rights;
- (6) failure by administrative authorities to pay, in accordance with law, pensions for disabled persons or to the family of a deceased;
- (7) unlawful requirement by administrative authorities of the performance of obligations;
or
- (8) infringement by administrative authorities of other personal or property rights.

Apart from those cases stipulated in the preceding paragraph, the people's courts shall accept and hear other administrative cases in which the bringing of proceedings is permitted by law or rules and regulations.

Article 12 The people's courts shall not accept and hear proceedings in which citizens, legal persons or other organizations bring proceedings in respect of the following matters:

- (1) acts of state pertaining to such matters as national defense or diplomatic relations;

- (2) administrative rules and regulations, articles and by-laws or generally binding decisions or orders formulated or issued by administrative authorities;
- (3) decisions of administrative authorities on matters such as reward and punishment and appointment and dismissal of personnel; and
- (4) specific administrative acts that are stipulated by law to be finally decided by administrative authorities.

Chapter 3 : Jurisdiction

Article 13 The basic-level people's courts shall have jurisdiction as courts of first instance over administrative cases.

Article 14 The intermediate-level people's courts shall have jurisdiction as courts of first instance over the following administrative cases:

- (1) cases of confirmation of rights to invention patents and cases handled by Customs;
- (2) cases in which proceedings are brought in respect of specific administrative acts of various departments of the State Council or the people's governments of provinces, autonomous regions or municipalities directly under the central authorities; and
- (3) complex cases having great impact on their own jurisdictional district.

Article 15 The higher-level people's courts shall have jurisdiction as courts of first instance over complex administrative cases having great impact on their own jurisdictional district.

Article 16 The Supreme People's Court shall have jurisdiction as the court of first instance over complex administrative cases having great impact on the entire country.

Article 17 Administrative cases shall be under the jurisdiction of the people's court in the place where the administrative authority that initially performed the administrative act is located. Reconsidered cases in which the reconsidering authority modified the original specific administrative act may also be under the jurisdiction of the people's court in the place where the reconsidering authority is located.

Article 18 Proceedings arising from disagreement with coercive administrative measures that restrict personal freedom shall be under the jurisdiction of the people's court in the place where the defendant or plaintiff is located.

Article 19 Administrative proceedings arising from immovable property shall be under

the jurisdiction of the people's court in the place where the immovable property is located.

Article 20 Where two or more people's courts have jurisdiction over a case, the plaintiff may select one court in which to bring proceedings. Where the plaintiff has brought proceedings in two or more people's courts that have jurisdiction, the people's court that first received the complaint shall handle the case.

Article 21 Where a people's court discovers that a case it has accepted for hearing is not within its jurisdiction, it shall transfer the case to a people's court that has jurisdiction. A people's court to which a case has been so transferred shall not transfer the case of its own accord.

Article 22 Where a people's court having jurisdiction over a case cannot exercise such jurisdiction due to special reasons, a higher-level people's court shall designate another people's court to exercise jurisdiction.

A dispute between people's courts over jurisdiction shall be resolved by the disputing people's courts through consultation. If consultation fails, the matter shall be reported to a higher-level people's court that is common to both for designation of jurisdiction.

Article 23 The higher-level people's courts shall have the right to adjudicate administrative cases over which the lower-level people's courts have jurisdiction as courts of first instance. Such courts may also transfer administrative cases over which they themselves have jurisdiction as courts of first instance to the lower-level people's courts.

When a lower-level people's court considers it necessary that an administrative case over which it has jurisdiction as a court of first instance be adjudicated by a higher-level people's court, it may submit the case to a higher-level people's court for decision.

Chapter 4 : Participants in Proceedings

Article 24 Citizens, legal persons or other organizations that bring administrative proceedings in accordance with this Law shall be plaintiffs.

In the event of the death of a citizen who has the right to bring proceedings, his or her close relatives may bring proceedings.

In the event of the termination of a legal person or other organization, the legal person or other organization that succeeds to its rights may bring proceedings.

Article 25 Where citizens, legal persons or other organizations bring proceedings directly in the people's courts, the administrative authorities that performed the specific administrative acts shall be the defendants.

In reconsidered cases, where a reconsidering authority has decided to uphold an original specific administrative act, the administrative authority that performed the original specific administrative act shall be the defendant; where the reconsidering authority has modified the original specific administrative act, the reconsidering authority shall be the defendant.

Where two or more administrative authorities perform the same specific administrative act, the administrative authorities that jointly performed the specific administrative act shall be co-defendants.

Where organizations authorized by law or rules and regulations perform specific administrative acts, such organizations shall be the defendants. Where organizations entrusted by administrative authorities perform specific administrative acts, the entrusting administrative authorities shall be the defendants.

Where administrative authorities have been cancelled, the administrative authorities that continue to perform their functions shall be the defendants.

Article 26 Proceedings shall be joint when there are two or more persons on one side or both sides of an administrative case arising from the same specific administrative act, or from similar specific administrative acts, and the people's court considers that they may be heard together.

Article 27 Other citizens, legal persons or other organizations that have an interest in the specific administrative act in respect of which proceedings are being brought may apply to participate in proceedings as third parties or shall be notified by a people's court to participate.

Article 28 A legal agent shall proceed on behalf of a citizen who does not have the competence to perform procedural acts. When legal agents are mutually reluctant to fulfil their responsibilities as agents, a people's court shall appoint one from among them to act in proceedings on a citizen's behalf.

Article 29 Parties or legal agents may entrust one to two persons to represent them in proceedings.

Lawyers, social groups, close relatives of citizens bringing proceedings or persons recommended by the citizens' units, as well as other citizens permitted by a people's court, may be appointed as agents in proceedings.

Article 30 A lawyer acting as an agent in proceedings may, in accordance with provisions, consult materials concerning the case and investigate relevant organizations and citizens and collect evidence. The lawyer shall, in accordance with the provisions of law, maintain confidentiality with respect to materials involving state secrets and the private affairs of individuals.

With the permission of the people's court, parties and other agents in proceedings may consult materials to be examined in court concerning the case, with the exception of materials involving state secrets or the private affairs of individuals.

Chapter 5 : Evidence

Article 31 Evidence shall consist of the following various types:

- (1) documentary evidence;
- (2) material evidence;
- (3) audio-visual materials;
- (4) testimony of witnesses;
- (5) statements of the parties;
- (6) conclusions of expert evaluations; and
- (7) records of inspection or records of the scene of an incident.

The above evidence must undergo examination by the court for verification before it can be regarded as a basis for establishing a case.

Article 32 The defendant shall bear the burden of proof with respect to specific administrative acts and shall provide evidence for performing such specific administrative acts and the regulatory documents on which such specific administrative acts were based.

Article 33 During the course of proceedings, the defendant may not of its own accord collect evidence from the plaintiff or witnesses.

Article 34 The people's courts shall have the right to require parties to provide or supplement evidence.

The people's courts shall have the right to investigate and obtain evidence from relevant administrative authorities, as well as other organizations and citizens.

Article 35 During the course of proceedings, where a people's court considers that specialized problems require expert evaluations, such problems shall be turned over to legally prescribed expert evaluation departments for expert evaluations; where there is no legally prescribed expert evaluation department, the people's court shall designate an expert

evaluation department to carry out expert evaluations.

Article 36 Under circumstances in which evidence might be lost or destroyed or difficult to obtain later, the participants in proceedings may apply to the people's court for the preservation of evidence. The people's court may also take the initiative in adopting preservation measures.

Chapter 6 : Bringing and Acceptance and Hearing of Cases

Article 37 In dealing with administrative cases that are within the scope accepted for hearing by the people's courts, citizens, legal persons or other organizations may initially apply to administrative authorities at the next higher level or those prescribed by law or rules and regulations for reconsideration and then, if they disagree with the reconsideration, bring proceedings in a people's court; they may also go directly to a people's court to bring proceedings.

Where citizens, legal persons or other organizations are required by law or rules and regulations to initially apply to an administrative authority for reconsideration and then, if they disagree with the reconsideration, bring proceedings in a people's court, they shall do so in accordance with the provisions of the law or rules and regulations.

Article 38 Where citizens, legal persons or other organizations apply to an administrative authority for reconsideration, the reconsidering authority shall render its decision within two months of the date of receipt of the application, except as may otherwise be stipulated by law or rules and regulations.

An applicant that disagrees with a decision of reconsideration may bring proceedings in a people's court within 15 days of the date of receipt of the decision of reconsideration. Where the reconsidering authority fails to render its decision within the specified period, the applicant may bring proceedings in a people's court within 15 days of expiration of the reconsideration period, except as may otherwise be stipulated by law.

Article 39 Citizens, legal persons or other organizations that directly bring proceedings in the people's courts shall do so within three months of the date on which the specific administrative act became known to them, except as may otherwise be stipulated by law.

Article 40 Where citizens, legal persons or other organizations fail to act within the legally prescribed period because of *force majeure* or other special circumstances, they may, within 10 days after the hindrance is removed, apply to the people's courts for a decision to extend the period.

Article 41 In bringing proceedings, the following requirements shall be met:

- (1) the plaintiff must be a citizen, legal person or other organization that considers its lawful rights and interests infringed upon by a specific administrative act;
- (2) there must be a clear and definite defendant;
- (3) there must be a specific claim and a factual basis on which to have proceedings; and
- (4) the case must fall within the jurisdictional scope of the people's courts and under the jurisdiction of the people's court in which proceedings are brought.

Article 42 Within seven days following receipt of a written complaint and upon review, the people's court shall register the case or rule not to accept and hear the case. The plaintiff may appeal if it does not agree with the ruling.

Chapter 7 : Hearings and Judgements

Article 43 The people's court shall send a copy of the complaint to the defendant within five days of registering a case. The defendant shall provide relevant materials concerning the specific administrative act and present a reply brief to the people's court within 10 days following receipt of the copy of the complaint. The people's court shall send a copy of the reply brief to the plaintiff within five days of receipt of the reply brief.

The failure of a defendant to present a reply brief shall not affect the hearing of a case by the people's court.

Article 44 During the period of proceedings, the performance of the specific administrative act shall not be terminated. However, in any one of the following circumstances, performance of the specific administrative act shall be terminated:

- (1) the defendant considers it necessary to terminate performance;
- (2) the plaintiff applies for termination of performance, and the people's court rules to terminate performance because it considers that performance of such specific administrative act will result in irreparable damage and that termination of such act will not harm the public interest; or
- (3) law or rules and regulations stipulate that performance be terminated.

Article 45 The people's courts shall conduct hearings of administrative cases in public; except for cases involving state secrets, the private affairs of individuals and cases as may otherwise be stipulated by law.

Article 46 Hearings of administrative cases by the people's courts shall be conducted by a collegial panel of judges or a collegial panel composed of judges and assessors. The

number of members composing a collegial panel shall be an odd number of three or more.

Article 47 Parties who consider that adjudication personnel have an interest in a case or have other relationships that may influence the fair and just adjudication of the case shall have the right to apply for the withdrawal of the adjudication personnel.

Adjudication personnel who consider that they themselves have an interest in a case or other relationships shall apply for withdrawal.

The provisions of the preceding two paragraphs shall also apply to clerks, interpreters, expert witnesses and inspectors.

The withdrawal of the president serving as presiding judge shall be decided by the adjudication committee. Withdrawal of other adjudication personnel shall be decided by the president. Withdrawal of other personnel shall be decided by the presiding judge. A party who does not agree with such decisions may apply for reconsideration.

Article 48 Where a plaintiff legally summoned twice by the people's court refuses without legitimate grounds to appear, it shall be considered to have applied for the withdrawal of proceedings. Where a defendant refuses without legitimate grounds to appear, a default judgement may be rendered.

Article 49 The people's courts may, according to the seriousness of the circumstances, reprimand, order the making of a statement of repentance from, fine up to 1,000 yuan or detain up to 15 days participants in proceedings or other persons with respect to any one of the following acts and, if the act constitutes a crime, criminal responsibility shall be investigated in accordance with the law:

- (1) groundless evasion and procrastination, rejection or hindrance of enforcement by persons whose duty it is to assist in enforcement and who are in receipt of a notice of the people's court requesting assisting in such enforcement;
- (2) falsification, concealment or destruction of evidence;
- (3) instigation, bribery or coercion of false testimony by another person, or threat or hindrance of testimony by witnesses;
- (4) concealment, transfer, sale or destruction of property that has been sealed, seized or frozen;
- (5) obstruction of personnel of a people's court in carrying out their duties or disturbance of the work order of a people's court by force, threat and other means; or
- (6) insult, slander, false accusation, beating of or other means of retaliation against personnel of a people's court, participants in proceedings or people assisting in enforcement.

Fines and detentions must be approved by the president of a people's court. A

party that does not agree with the decision may apply for reconsideration.

Article 50 In hearing administrative cases, the people's courts shall not apply mediation.

Article 51 Where, prior to pronouncement of a judgement or ruling by a people's court, a plaintiff makes an application to withdraw an action or a defendant modifies its specific administrative act and the plaintiff agrees to make an application to withdraw the action, the people's court shall make a ruling on whether to approve such application.

Article 52 The people's courts shall base their hearing of administrative cases on law and administrative and local rules and regulations. Local rules and regulations shall apply to administrative cases that arise within the administrative region concerned.

The people's courts shall base their hearing of administrative cases of ethnic autonomous localities on the regulations on the exercise of autonomy and separate regulations of such ethnic autonomous localities.

Article 53 The people's courts shall hear administrative cases with reference to rules and regulations formulated or issued by ministries or commissions of the State Council in accordance with the law and the State Council's administrative rules and regulations, decisions and orders, as well as rules and regulations formulated or issued by the people's governments of the provinces, autonomous regions, municipalities directly under the central authorities and municipalities in which the people's governments of provinces or autonomous regions are situated, and the people's governments of relatively large municipalities approved by the State Council, in accordance with the law and the State Council's administrative rules and regulations.

Where the people's courts consider that the rules and regulations formulated or issued by local people's governments are inconsistent with the rules and regulations formulated or issued by ministries or commissions of the State Council or that the articles and by-laws formulated or issued by ministries or commissions of the State Council are inconsistent within themselves, the Supreme People's Court shall refer the inconsistencies to the State Council for interpretation or ruling.

Article 54 After a hearing, a people's court shall, according to different circumstances, render the following judgements respectively:

- (1) where, in respect of a specific administrative act, the evidence is conclusive, the application of law or rules and regulations was correct and the legally prescribed procedure was complied with, the judgement shall be to uphold the specific administrative act;

- (2) where any one of the following circumstances occurs, in respect of a specific administrative act, the judgment shall be to revoke all or part of the specific administrative act and may also be to require the defendant to perform a new specific administrative act:
 - (a) there is insufficient principal evidence;
 - (b) the application of law or rules and regulations was incorrect;
 - (c) there was a violation of legally prescribed procedure;
 - (d) the limit of authority was exceeded; or
 - (e) there was an abuse of authority;
- (3) where a defendant fails to perform or delays the performance of its legal duties, the judgment shall be to require the defendant to carry out performance within a specified period; and
- (4) where administrative penalties are clearly unjust, the judgment may be to modify the administrative penalties.

Article 55 Where the judgment of a people's court requires a defendant to perform a new specific administrative act, the defendant may not, based on the same facts and reasons, perform a specific administrative act that is basically the same as the original specific administrative act.

Article 56 In hearing administrative cases, if a people's court considers that there is a violation of governmental discipline by the personnel in charge or the directly responsible persons of an administrative authority, the people's court shall transfer the relevant materials to such administrative authority or the administrative authority at the next higher level or the supervisory or personnel authority; if it considers that there is a criminal act, it shall transfer the relevant materials to the public security or procuratorial authority.

Article 57 A people's court shall renew a judgment of the first instance within three months of the date of registration of a case. Extensions required under special circumstances shall be approved by the higher-level people's court. Extensions required by higher-level people's court in hearing cases of the first instance shall be approved by the Supreme People's Court.

Article 58 A party that does not agree with a judgment of the first instance of a people's court shall have the right to appeal to a people's court at the next higher level within 15 days of the date of the serving of the judgment. A party that does not agree with a ruling of the first instance of a people's court shall have the right to appeal to a people's court at the next higher level within 10 days of the date of the serving of the ruling. If an appeal has not been

made within the time period, a judgment or ruling of the first instance of a people's court shall become legally effective.

Article 59 The people's courts may conduct documentary hearings of appeals for which they consider the facts to be clear.

Article 60 In hearing an appeal, a people's court shall render a final judgment within two months of the date of receipt of the written appeal. Extensions required under special circumstances shall be approved by the higher-level people's court. Extensions required by the higher-level people's court in hearing appeals shall be approved by the Supreme People's Court.

Article 61 In hearing an appeal, a people's court shall handle it according to the following circumstances, respectively:

- (1) where the determination of facts is clear and the application of law or rules and regulations was correct in the original judgment, its judgment shall reject the appeal and uphold the original judgment;
- (2) where the determination of facts in the original judgment is clear, but there was an error in the application of law or rules and regulations, it shall revise the judgment according to law; or
- (3) where the determination of facts in the original judgment was unclear or the evidence was insufficient or there was a violation of legally prescribed procedure that could have affected the correct determination of the case, it shall make a ruling to revoke the original judgment and return the case to the people's court that originally adjudicated it for readjudication, or it may revise the judgment after making a thorough investigation of the facts. A party may appeal against a judgment or ruling of a readjudicated case.

Article 62 Where parties consider that there are actual errors in judgments or rulings that have already become legally effective, they may petition the people's court that originally adjudicated the cases or a higher-level people's court, but such judgments or rulings shall continue to be enforced.

Article 63 Where presidents of the people's courts discover that there are violations of the provisions of law or rules and regulations in judgments or rulings of their courts that have already become legally effective and consider that they need to be readjudicated, they shall send the cases to the adjudication committee to decide whether they will be readjudicated.

Where higher-level people's courts discover that there are violations of the provisions of law or rules and regulations in judgments or rulings of lower-level people's courts that have already become legally effective, they shall have the right to remove the cases for their own adjudication or direct the lower-level people's courts to readjudicate them.

Article 64 Where the people's procuratorates discover that there are violations of the provisions of law or rules and regulations in judgments or rulings of the people's courts that have already become legally effective, they shall have the right to protest in accordance with the procedure for the supervision of adjudication.

Chapter 8 : Enforcement

Article 65 Parties must perform judgments or rulings of the people's courts that have become legally effective.

Where a citizen, legal person or other organization refuses to perform a judgment or ruling, an administrative authority may apply to the people's court of first instance for compulsory enforcement or compel enforcement in accordance with the law.

Where an administrative authority refuses to perform a judgment or ruling, the people's court of first instance may adopt the following measures:

- (1) notification to the bank to transfer any fine refundable or compensation payable from the account of such administrative authority;
- (2) where an administrative authority fails to carry out performance within a stipulated period, a fine of 50 yuan up to 100 yuan per day starting from the expiration of such period shall be imposed on such administrative authority;
- (3) presentation of a judicial proposal to the administrative authority at the next level higher than such administrative authority or to the supervisory or personnel authority. An authority accepting a judicial proposal shall handle the matter in accordance with relevant provisions and inform the people's court of how the matter has been handled; and
- (4) where the circumstances of refusal to perform a judgment or ruling are serious and the act constitutes a crime, the criminal responsibility of the persons in charge and the persons directly responsible shall be investigated in accordance with the law.

Article 66 Where a citizen, legal person or other organization neither brings proceedings nor carries out performance in respect of a specific administrative act within the legally prescribed period of time, an administrative authority may apply to a people's court for compulsory enforcement or compel enforcement in accordance with the law.

Chapter 9 : Liability to Compensate for Infringement of Rights

Article 67 Citizens, legal persons or other organizations whose lawful rights and interests are infringed upon by specific administrative acts of administrative authorities or their personnel which result in damage shall have the right to claim compensation.

Where a citizen, legal person or other organization acts alone in claiming compensation for damage, the matter shall first be handled by an administrative authority. Where the citizen, legal person or other organization disagrees with how the administrative authority handled the matter, such citizen, legal person or other organization may bring proceedings in a people's court.

Mediation may be applied in compensation proceedings.

Article 68 Where an administrative authority or its work personnel performs a specific administrative act that infringes the lawful rights and interests of a citizen, legal person or other organization and results in injury, such administrative authority or the administrative authority to which such work personnel belong shall be liable for compensation.

After compensating for the losses, the administrative authority shall cause its work personnel who acted with intent or gross negligence to bear part or all of the compensation costs.

Article 69 Compensation costs shall be itemized as an expenditure of the finance departments at various levels. The people's governments at various levels may cause the responsible administrative authorities to pay for part or all of the compensation costs. Specific measures shall be stipulated by the State Council.

Chapter 10 : Administrative Proceedings Involving Foreign Interests

Article 70 This Law shall apply to administrative proceedings conducted in the People's Republic of China by foreigners, stateless persons or foreign organizations, except as may otherwise be stipulated by law.

Article 71 A foreigner, stateless person or foreign organization that conducts administrative proceedings in the People's Republic of China shall have rights and obligations in proceedings equal to those of a citizen or organization of the People's Republic of China.

Where a court of a foreign country imposes limits on the administrative rights of citizens or organizations of the People's Republic of China in proceedings, the people's courts shall carry out the principle of reciprocity with respect to the administrative rights in

proceedings of the citizens or organizations of that country.

Article 72 Where there is an inconsistency between the provisions of an international treaty entered into or participated in by the People's Republic of China and the provisions of this Law, the provisions of such international treaty shall be applied, except for articles in respect of which the People's Republic of China has declared reservation.

Article 73 Where a foreigner, stateless person or foreign organization conducts administrative proceedings in the People's Republic of China and entrusts representation in the proceedings to a lawyer such entrustment shall be to a lawyer of a law office of the People's Republic of China.

Chapter 11 : Supplementary Provisions

Article 74 The people's courts shall collect litigation fees for hearing administrative cases. Litigation fees shall be borne by the losing party or shared by both parties if both are liable. Specific measures for collecting litigation fees shall be separately formulated.

Article 75 This Law shall be implemented from October 1, 1990.

Appendix 2 Survey Questionnaire for Individual Household Proprietors

Questionnaire

Dear citizens and friends,

As a scientific research and to help further develop our country's administrative litigation, we are now conducting a survey in Beijing regarding the implementation of the Administrative Litigation Law. Questions in this questionnaire are mostly related to your daily life. There is no correct or wrong answer. Respond directly to the question and give your general opinion according to your usual belief and behaviour will be sufficient. You do not have to write your name or unit. Your answers will be kept strictly confidential. Thank you very much for your cooperation.

Please answer the following questions by ticking the appropriate box.

		Yes	No
1	Have you heard of cases about citizens suing the government?		
2	Have you heard that citizens can now sue the government?		
3	Have you yourself sued the government?		
4	Have you heard of the "Administrative Litigation Law"?		
5	Have you studied the "Administrative Litigation Law"?		

Our country had formally established administrative litigation in October 1990, commonly known as "citizens suing the government". On that, do you agree with the following statements? Please tick the appropriate box.

1 = Totally Agree; 2 = Agree; 3 = Neutral; 4 = Disagree; 5 = Totally Disagree; 9 = Don't Know.

		1	2	3	4	5	9
6	Citizens should not sue the government, other methods should be used to solve the problem.						
7	It is a Western institution, not suitable for our country.						
8	I do not support establishing the institution.						
9	Government bureaus do not carry out illegal action.						
10	I don't care about implementation of the institution.						
11	I know very little about the present institution.						

Do you agree that citizens can initiate administrative litigation in the following circumstances? Please tick the appropriate box.

1 = Totally Agree; 2 = Agree; 3 = Neutral; 4 = Disagree; 5 = Totally Disagree; 9 = Don't Know.

		1	2	3	4	5	9
12	Officials abuse their authority in awarding penalties to citizens.						
13	Officials exceed the limit of their legal authority in awarding penalties to citizens.						
14	Officials use the wrong regulation in awarding penalties to citizens.						
15	Officials violate the legally prescribed procedure in awarding penalties to citizens.						
16	Officials have insufficient essential evidence in awarding penalties to citizens.						
17	Registration fees regulation made by government is unreasonable.						
18	The Industry and Commerce Bureau collects registration fees in excess of the amount stipulated in the regulation.						

Do you agree that establishing administrative litigation will bring the following consequences? Please tick the appropriate box.

1 = Totally Agree; 2 = Agree; 3 = Neutral; 4 = Disagree; 5 = Totally Disagree; 9 = Don't Know.

		1	2	3	4	5	9
19	Strengthen the protection of legal rights and interests of citizens.						
20	Push the government to work according to the laws.						
21	Strengthen the idea of rule of law in the society.						
22	Reduce the cases of abusing authority by government and its officials.						
23	Increase the government's efficiency at work.						
24	Strengthen the government's status.						

There are different views regarding the implementation of administrative litigation, do you agree with the following statements? Please tick the appropriate box.

1 = Totally Agree; 2 = Agree; 3 = Neutral; 4 = Disagree; 5 = Totally Disagree; 9 = Don't Know.

		1	2	3	4	5	9
25	Petitioning to higher levels of the government can better solve the problem than suing the government in court.						
26	Using personal connection can better solve the problem than suing the government in court.						
27	Using money can better solve the problem than suing the government in court.						
28	Courts cannot fairly hear cases of administrative litigation initiated by citizens.						
29	Courts will defend the administration.						
30	Courts' verdicts cannot bind the administration.						
31	Citizens do not dare to sue the government for fear of revenge by the officials.						
32	It is very difficult to put administrative litigation into practice.						

Do you agree with the following statements about the future development of administrative litigation? Please tick the appropriate box.

1 = Totally Agree; 2 = Agree; 3 = Neutral; 4 = Disagree; 5 = Totally Disagree; 9 = Don't Know.

		1	2	3	4	5	9
33	Administrative litigation can help advance the reform and opening, hence should be further developed.						
34	Administrative litigation can help protect citizens' legal rights and interests, hence should be further developed.						
35	Administrative litigation can help strengthen the rule of law, hence should be further developed.						
36	Development of administrative litigation requires judicial independence.						
37	There is a bright future for administrative litigation but the road is winding.						

Please continue answering the following questions by ticking the appropriate box.

38. Your gender: ☐ 1. Male ☐ 2. Female

39. Your age: ☐ 1. 18-30 ☐ 2. 31-40 ☐ 3. 41-50
☐ 4. 51-60 ☐ 5. 61 and above

40. Your political status:

☐ 1. Communist Party member ☐ 2. Communist Youth League member
☐ 3. Democratic Party member ☐ 4. Non-member

41. How long have you been in your present occupation?

☐ 1. Less than 1 year ☐ 2. 1-3 year ☐ 3. 4-6 year
☐ 4. 7-10 year ☐ 5. Over 10 year

42. What kind of business are you running?

☐ 1. Retailing ☐ 2. Catering ☐ 3. Servicing
☐ 4. Repairing ☐ 5. Others _____

43. Are you registered Beijing municipal resident? ☐ 1. Yes ☐ 2. No

44. Your working district: ☐ 1. Hai Dian ☐ 2. Xi Cheng
☐ 3. Xuan Wu ☐ 4. Others _____

45. Your average real monthly income during the past year (RMB):

☐ 1. 300 and below ☐ 2. 301-600 ☐ 3. 601-1000
☐ 4. 1001-1500 ☐ 5. 1501-2500 ☐ 6. 2501-4000
☐ 7. Above 4000

46. Your education level:

☐ 1. No formal education ☐ 2. Primary
☐ 3. Lower Secondary ☐ 4. Upper Secondary
☐ 5. Post-secondary ☐ 6. Undergraduate and above

End of questionnaire.
Thank you for your cooperation!

Appendix 3 Survey Questionnaire for Government Officials

Questionnaire

Dear comrade,

As a scientific research and to help further develop our country's administrative litigation, we are now conducting a survey in Beijing regarding the implementation of the Administrative Litigation Law. Questions in this questionnaire are mostly related to your daily life. There is no correct or wrong answer. Respond directly to the question and give your general opinion according to your usual belief and behaviour will be sufficient. You do not have to write your name or unit. Your answers will be kept strictly confidential. Thank you very much for your cooperation.

Please answer the following questions by ticking the appropriate box.

		Yes	No
1	Have you heard of cases about citizens suing the government?		
2	Have you heard that citizens can now sue the government?		
3	Have you participated in administrative litigation?		
4	Have you heard of the "Administrative Litigation Law"?		
5	Have you studied the "Administrative Litigation Law"?		

Our country had formally established administrative litigation in October 1990, commonly known as "citizens suing the government". On that, do you agree with the following statements? Please tick the appropriate box.

1 = Totally Agree; 2 = Agree; 3 = Neutral; 4 = Disagree; 5 = Totally Disagree; 9 = Don't Know.

		1	2	3	4	5	9
6	Citizens should not sue the government, other methods should be used to solve the problem.						
7	It is a Western institution, not suitable for our country.						
8	I do not support establishing the institution.						
9	Government bureaus do not carry out illegal action.						
10	I don't care about implementation of the institution.						
11	I know very little about the present institution.						

Do you agree that citizens can initiate administrative litigation in the following circumstances? Please tick the appropriate box.

1 = Totally Agree; 2 = Agree; 3 = Neutral; 4 = Disagree; 5 = Totally Disagree; 9 = Don't Know.

		1	2	3	4	5	9
12	Officials abuse their authority in awarding penalties to citizens.						
13	Officials exceed the limit of their legal authority in awarding penalties to citizens.						
14	Officials use the wrong regulation in awarding penalties to citizens.						
15	Officials violate the legally prescribed procedure in awarding penalties to citizens.						
16	Officials have insufficient essential evidence in awarding penalties to citizens.						
17	Registration fees regulation made by government is unreasonable.						
18	The Industry and Commerce Bureau collects registration fees in excess of the amount stipulated in the regulation.						

Do you agree that establishing administrative litigation will bring the following consequences? Please tick the appropriate box.

1 = Totally Agree; 2 = Agree; 3 = Neutral; 4 = Disagree; 5 = Totally Disagree; 9 = Don't Know.

		1	2	3	4	5	9
19	Strengthen the protection of legal rights and interests of citizens.						
20	Push the government to work according to the laws.						
21	Strengthen the idea of rule of law in the society.						
22	Reduce the cases of abusing authority by government and its officials.						
23	Increase the government's efficiency at work.						
24	Strengthen the government's status.						

There are different views regarding the implementation of administrative litigation, do you agree with the following statements? Please tick the appropriate box.

1 = Totally Agree; 2 = Agree; 3 = Neutral; 4 = Disagree; 5 = Totally Disagree; 9 = Don't Know.

		1	2	3	4	5	9
25	Petitioning to higher levels of the government can better solve the problem than suing the government in court.						
26	Using personal connection can better solve the problem than suing the government in court.						
27	Using money can better solve the problem than suing the government in court.						
28	Courts cannot fairly hear cases of administrative litigation initiated by citizens.						
29	Courts will defend the administration.						
30	Courts' verdicts cannot bind the administration.						
31	Citizens do not dare to sue the government for fear of revenge by the officials.						
32	It is very difficult to put administrative litigation into practice.						

Do you agree with the following statements about the future development of administrative litigation? Please tick the appropriate box.

1 = Totally Agree; 2 = Agree; 3 = Neutral; 4 = Disagree; 5 = Totally Disagree; 9 = Don't Know.

		1	2	3	4	5	9
33	Administrative litigation can help advance the reform and opening, hence should be further developed.						
34	Administrative litigation can help protect citizens' legal rights and interests, hence should be further developed.						
35	Administrative litigation can help strengthen the rule of law, hence should be further developed.						
36	Development of administrative litigation requires judicial independence.						
37	There is a bright future for administrative litigation but the road is winding.						

Please continue answering the following questions by ticking the appropriate box.

38. Your gender: ☐ 1. Male ☐ 2. Female

39. Your age: ☐ 1. 18-30 ☐ 2. 31-40 ☐ 3. 41-50
☐ 4. 51-60 ☐ 5. 61 and above

40. Your political status:

☐ 1. Communist Party member ☐ 2. Communist Youth League member
☐ 3. Democratic Party member ☐ 4. Non-member

41. How long have you been in your present occupation?

☐ 1. Less than 1 year ☐ 2. 1-3 year ☐ 3. 4-6 year
☐ 4. 7-10 year ☐ 5. Over 10 year

42. Which department are you working in?

☐ 1. Public Security ☐ 2. Environmental Protection
☐ 3. Industry and Commerce ☐ 4. Civil Affairs
☐ 5. Hygiene ☐ 6. Fire Services
☐ 7. Others _____

43. Your working district: ☐ 1. Hai Dian ☐ 2. Xi Cheng
☐ 3. Xuan Wu ☐ 4. Others _____

44. Your average real monthly income during the past year (RMB):

☐ 1. 300 and below ☐ 2. 301-600 ☐ 3. 601-1000
☐ 4. 1001-1500 ☐ 5. 1501-2500 ☐ 6. 2501-4000
☐ 7. Above 4000

45. Your education level:

☐ 1. No formal education ☐ 2. Primary
☐ 3. Lower Secondary ☐ 4. Upper Secondary
☐ 5. Post-secondary ☐ 6. Undergraduate and above

End of questionnaire.
Thank you for your cooperation!

Appendix 4 Questionnaire for Pilot Survey

Questionnaire

Dear citizens and friends,

As a scientific research and to help further develop our country's administrative litigation, the Institute of Public Administration, People's University of China, is now conducting a survey in Beijing regarding the implementation of the Administrative Litigation Law. Questions in this questionnaire are mostly related to your daily life. There is no correct or wrong answer. Respond directly to the question and give your general opinion according to your usual belief and behaviour will be sufficient. You do not have to write your name or unit. Your answers will be kept strictly confidential. Thank you very much for your cooperation.

Please answer the following questions by ticking the appropriate box.

		Yes	No
1	Have you heard of cases about citizens suing the government?		
2	Have you heard that citizens can now sue the government?		
3	Have you yourself sued the government?		
4	Have you heard of the "Administrative Litigation Law"?		
5	Have you studied the "Administrative Litigation Law"?		

Our country had formally established administrative litigation in October 1990, commonly known as "citizens suing the government". On that, do you agree with the following statements? Please tick the appropriate box.

1 = Totally Agree; 2 = Agree; 3 = Neutral; 4 = Disagree; 5 = Totally Disagree; 9 = Don't Know.

		1	2	3	4	5	9
6	Citizens should not sue the government, other methods should be used to solve the problem.						
7	It is a Western institution, not suitable for our country.						
8	I do not support establishing the institution.						
9	Government bureaus do not carry out illegal action.						
10	I don't care about implementation of the institution.						
11	I know very little about the present institution.						
12	If you have other opinion about establishment of administrative litigation, please state:						

Do you agree that citizens can initiate administrative litigation in the following circumstances? Please tick the appropriate box.

1 = Totally Agree; 2 = Agree; 3 = Neutral; 4 = Disagree; 5 = Totally Disagree; 9 = Don't Know.

		1	2	3	4	5	9
13	Officials abuse their authority in awarding penalties to citizens.						
14	Officials exceed the limit of their legal authority in awarding penalties to citizens.						
15	Officials use the wrong regulation in awarding penalties to citizens.						
16	Officials violate the legally prescribed procedure in awarding penalties to citizens.						
17	Officials have insufficient essential evidence in awarding penalties to citizens.						
18	One individual household proprietors feels that the registration fees regulation made by the Industry and Commerce Bureau is unreasonable.						
19	If you have other opinion about the circumstances where citizens can sue the government, please state:						

Do you agree that establishing administrative litigation will bring the following consequences? Please tick the appropriate box.

1 = Totally Agree; 2 = Agree; 3 = Neutral; 4 = Disagree; 5 = Totally Disagree; 9 = Don't Know.

		1	2	3	4	5	9
20	Strengthen the protection of legal rights and interests of citizens.						
21	Push the government to work according to the laws.						
22	Strengthen the idea of rule of law in the society.						
23	Reduce the cases of abusing authority by government and its officials.						
24	Increase the government's efficiency at work.						
25	Strengthen the government's status.						
26	If you have other opinion about the consequences of administrative litigation, please state:						

There are different views regarding the implementation of administrative litigation, do you agree with the following statements? Please tick the appropriate box.

1 = Totally Agree; 2 = Agree; 3 = Neutral; 4 = Disagree; 5 = Totally Disagree; 9 = Don't Know.

		1	2	3	4	5	9
27	Petitioning to higher levels of the government can better solve the problem than suing the government in court.						
28	Using personal connection can better solve the problem than suing the government in court.						
29	Using money can better solve the problem than suing the government in court.						
30	Courts can fairly hear cases of administrative litigation initiated by citizens.						
31	Courts will defend the administration.						
32	Courts' verdicts is binding on the administration.						
33	Citizens do not dare to sue the government for fear of revenge by the officials.						
34	It is very difficult to put administrative litigation into practice.						
35	If you have other opinion about the implementation of administrative litigation, please state:						

Do you agree with the following statements about the future development of administrative litigation? Please tick the appropriate box.

1 = Totally Agree; 2 = Agree; 3 = Neutral; 4 = Disagree; 5 = Totally Disagree; 9 = Don't Know.

		1	2	3	4	5	9
36	Administrative litigation can help advance the reform and opening, hence should be further developed.						
37	Administrative litigation can help protect citizens' legal rights and interests, hence should be further developed.						
38	Administrative litigation can help strengthen the rule of law, hence should be further developed.						
39	Development of administrative litigation requires judicial independence.						
40	There is a bright future for administrative litigation but the road is winding.						
41	If you have other opinion about the implementation of administrative litigation, please state:						

Please continue answering the following questions by ticking the appropriate box.

42. Your sex: ☐ 1. Male ☐ 2. Female

43. Your age:

- ☐ 1. 18-30 ☐ 2. 31-40 ☐ 3. 41-50
☐ 4. 51-60 ☐ 5. 61 and above

44. Your political status:

- ☐ 1. Communist Party member ☐ 2. Communist Youth League member
☐ 3. Democratic Party member ☐ 4. Non-member

45. Your occupation:

- ☐ 1. Government Official ☐ 2. Individual household proprietor
☐ 3. Worker ☐ 4. Lawyer
☐ 5. Judge of court ☐ 6. Others _____

46. How long have you been in your present occupation?

- ☐ 1. Less than 1 year ☐ 2. 1-3 year ☐ 3. 4-6 year
☐ 4. 7-10 year ☐ 5. Over 10 year

47. If you are an individual household proprietor, what kind of business are you running?

- ☐ 1. Retailing ☐ 2. Catering ☐ 3. Servicing
☐ 4. Repairing ☐ 5. Others _____

48. If you are a government official, what position are you in?

- ☐ 1. Front-line ☐ 2. Supporting
☐ 3. Managerial ☐ 4. Others _____

49. Your working district:

- ☐ 1. Hai Dian ☐ 2. Xi Cheng
☐ 3. Feng Tai ☐ 4. Others _____

50. Your average real monthly income during the past year:

- ☐ 1. 300 and below ☐ 2. 301-600 ☐ 3. 601-1000
☐ 4. 1001-1500 ☐ 5. 1501-2500 ☐ 6. 2501-4000
☐ 7. Above 4000

51. Your education level:

- ☐ 1. No formal education ☐ 2. Primary ☐ 3. Lower Secondary
☐ 4. Upper Secondary ☐ 5. Post-secondary ☐ 6. Bachelor
☐ 7. Postgraduate

End of questionnaire. Thank you for your cooperation!

Appendix 5 Frequency Distribution Results for Individual Household Proprietors

		Yes	No	Missing
1	Have you heard of cases about citizens suing the government?	q 555	182	1
		% 75.3	24.7	
2	Have you heard that citizens can now sue the government?	q 521	215	2
		% 70.8	29.2	
3	Have you yourself sued the government?	q 36	701	1
		% 4.9	95.1	
4	Have you heard of the "Administrative Litigation Law"?	q 565	168	5
		% 77.1	22.9	
5	Have you studied the "Administrative Litigation Law"?	q 151	582	5
		% 20.6	79.4	

		1	2	3	4	5	9	0
6	Citizens should not sue the government, other methods should be used to solve the problem.	q 21	69	96	350	171	26	5
		% 2.9	9.4	13.1	47.8	23.3	3.5	
7	It is a Western institution, not suitable for our country.	q 15	45	71	356	112	127	12
		% 2.1	6.2	9.8	49.0	15.4	17.5	
8	I do not support establishing the institution.	q 24	51	86	382	126	59	10
		% 3.3	7.0	11.8	52.5	17.3	8.1	
9	Government bureaus do not carry out illegal action.	q 19	20	60	339	193	96	11
		% 2.6	2.8	8.3	46.6	26.5	13.2	
10	I don't care about implementation of the institution.	q 12	89	146	333	63	78	17
		% 1.7	12.3	20.3	46.2	8.7	10.8	
11	I know very little about the present institution.	q 54	432	85	49	14	97	7
		% 7.4	59.1	11.6	6.7	1.9	13.3	

		1	2	3	4	5	9	0
12	Officials abuse their authority in awarding penalties to citizens.	q 219	315	30	64	89	14	7
		% 30.0	43.1	4.1	8.7	12.2	1.9	
13	Officials exceed the limit of their legal authority in awarding penalties to citizens	q 190	313	41	74	81	32	7
		% 26.0	42.8	5.6	10.1	11.1	4.4	
14	Officials use the wrong regulation in awarding penalties to citizens	q 147	294	86	82	42	73	14
		% 20.3	40.6	11.9	11.3	5.8	10.1	
15	Officials violate the legally prescribed procedure in awarding penalties to citizens.	q 149	315	48	88	59	63	16
		% 20.6	43.6	6.7	12.2	8.2	8.7	
16	Officials have insufficient essential evidence in awarding penalties to citizens.	q 147	296	62	98	61	56	18
		% 20.4	41.1	8.6	13.6	8.5	7.8	
17	Registration fees regulation made by government is unreasonable.	q 133	304	81	74	52	81	13
		% 18.3	41.9	11.2	10.2	7.2	11.2	
18	The Industry and Commerce Bureau collects registration fees in excess of the amount stipulated in the regulation	q 168	288	59	78	63	70	12
		% 23.1	39.7	8.1	10.8	8.7	9.6	

1 = Totally Agree; 2 = Agree; 3 = Neutral; 4 = Disagree; 5 = Totally Disagree;
 9 = Don't Know; 0 = Missing value; q = Frequency; % = Valid Percentage.

		1	2	3	4	5	9	0
19	Strengthen the protection of legal rights and interests of citizens.	q 308	387	16	5	6	9	7
		% 42.1	53.0	2.2	0.7	0.8	1.2	
20	Push the government to work according to the laws.	q 267	411	29	6	6	9	10
		% 36.7	56.5	4.0	0.8	0.8	1.2	
21	Strengthen the idea of rule of law in the society.	q 252	434	28	3	4	6	11
		% 34.7	59.7	3.9	0.4	0.5	0.8	
22	Reduce the cases of abusing authority by government and its officials.	q 260	383	38	15	12	19	11
		% 35.8	52.7	5.2	2.1	1.6	2.6	
23	Increase the government's efficiency at work.	q 223	379	63	15	6	42	10
		% 30.6	52.1	8.6	2.1	0.8	5.8	
24	Strengthen the government's status.	q 180	342	80	61	17	47	11
		% 24.8	47.0	11.0	8.4	2.3	6.5	

		1	2	3	4	5	9	0
25	Petitioning to higher level of the government can better solve the problem than suing the government in court.	q 43	149	139	241	31	118	17
		% 5.9	20.7	19.3	33.4	4.3	16.4	
26	Using personal connection can better solve the problem than suing the government in court.	q 84	197	101	236	65	38	17
		% 11.7	27.3	14.0	32.7	9.0	5.3	
27	Using money can better solve the problem than suing the government in court.	q 83	198	120	183	98	38	18
		% 11.5	27.5	16.7	25.4	13.6	5.3	
28	Courts cannot fairly hear cases of administrative litigation initiated by citizens.	q 36	117	182	244	69	74	16
		% 5.0	16.2	25.2	33.8	9.6	10.2	
29	Courts will defend the administration.	q 49	152	171	183	62	99	22
		% 6.8	21.2	23.9	25.6	8.7	13.8	
30	Courts' verdicts cannot bind the administration.	q 34	128	136	241	56	123	20
		% 4.7	17.8	19.0	33.6	7.8	17.1	
31	Citizens do not dare to sue the government for fear of revenge by the officials.	q 147	308	95	102	46	25	15
		% 20.3	42.6	13.1	14.1	6.4	3.5	
32	It is very difficult to put administrative litigation into practice.	q 61	277	131	158	17	79	15
		% 8.4	38.3	18.1	21.9	2.4	10.9	

		1	2	3	4	5	9	0
33	Administrative litigation can help advance the reform and opening, hence should be further developed.	q 246	406	35	9	2	26	14
		% 34.0	56.1	4.8	1.2	0.3	3.6	
34	Administrative litigation can help protect citizens' legal rights and interests, hence should be further developed.	q 245	433	26	2	2	17	13
		% 33.8	59.7	3.6	0.3	0.3	2.3	
35	Administrative litigation can help strengthen the rule of law, hence should be further developed.	q 223	434	37	6	2	20	16
		% 30.9	60.1	5.1	0.8	0.3	2.8	
36	Development of administrative litigation requires judicial independence.	q 169	245	77	62	11	160	14
		% 23.4	33.8	10.6	8.6	1.5	22.1	
37	There is bright future for administrative litigation but the road is winding.	q 212	384	57	14	3	54	14
		% 29.3	53.0	7.9	1.9	0.4	7.5	

1 = Totally Agree; 2 = Agree; 3 = Neutral; 4 = Disagree; 5 = Totally Disagree;
9 = Don't Know; 0 = Missing value; q = Frequency; % = Valid Percentage.

38. Your gender:

	<u>Frequency</u>	<u>(%)</u>
Male	472	(64.9)
Female	255	(35.1)
Missing value	11	

39. Your age:

18-30	377	(52.0)
31-40	203	(28.0)
41-50	84	(11.6)
51-60	37	(5.1)
61 and above	24	(3.3)
Missing value	13	

40. Your political status:

Communist Party member	53	(7.6)
Communist Youth League member	166	(23.6)
Democratic Party member	2	(0.3)
Non-member	481	(68.5)
Missing value	36	

41. How long have you been in your present occupation?

Less than 1 year	101	(14.1)
1-3 years	261	(36.3)
4-6 years	158	(22.0)
7-10 years	79	(11.0)
Over 10 years	119	(16.6)
Missing value	20	

42. What kind of business are you running?

Retailing	368	(54.9)
Catering	140	(20.9)
Servicing	119	(17.8)
Repairing	36	(5.4)
Others	7	(1.0)
Missing value	68	

43. Are you registered Beijing municipal resident?

Yes	335	(46.7)
No	383	(53.3)
Missing value	20	

44. Your working district:

Hai Dian	208	(28.2)
Xi Cheng	275	(37.3)
Xuan Wu	255	(34.5)
Others	0	(0.0)
Missing value	0	

45. Your average real monthly income during the past year (RMB):

300 and below	104	(14.5)
301-600	243	(34.0)
601-1000	229	(32.0)
1001-1500	67	(9.4)
1501-2500	39	(5.4)
2501-4000	14	(2.0)
Above 4000	19	(2.7)
Missing value	23	

46. Your education level:

No formal education	1	(0.1)
Primary	65	(9.0)
Lower Secondary	313	(43.3)
Upper Secondary	251	(34.7)
Post-secondary	70	(9.7)
Undergraduate and above	23	(3.2)
Missing value	15	

Appendix 6 Frequency Distribution Results for Government Officials

		Yes	No	Missing
1	Have you heard of cases about citizens suing the government?	q 139	12	1
		% 92.1	7.9	
2	Have you heard that citizens can now sue the government?	q 139	12	1
		% 92.1	7.9	
3	Have you participated in administrative litigation?	q 14	136	2
		% 9.3	90.7	
4	Have you heard of the "Administrative Litigation Law"?	q 147	5	0
		% 96.7	3.3	
5	Have you studied the "Administrative Litigation Law"?	q 112	40	0
		% 73.7	26.3	

		1	2	3	4	5	9	0
6	Citizens should not sue the government, other methods should be used to solve the problem.	q 3	8	11	97	32	1	0
		% 2.0	5.3	7.2	63.8	21.0	0.7	
7	It is a Western institution, not suitable for our country.	q 1	6	7	108	29	1	0
		% 0.7	3.9	4.6	71.0	19.1	0.7	
8	I do not support establishing the institution.	q 3	6	4	102	36	0	1
		% 2.0	4.0	2.6	67.6	23.8	0.0	
9	Government bureaus do not carry out illegal action.	q 1	4	2	93	47	5	0
		% 0.7	2.6	1.3	61.2	30.9	3.3	
10	I don't care about implementation of the institution.	q 3	6	16	110	14	1	2
		% 2.0	4.0	10.7	73.3	9.3	0.7	
11	I know very little about the present institution.	q 8	41	22	74	4	2	1
		% 5.3	27.2	14.6	49.0	2.6	1.3	

		1	2	3	4	5	9	0
12	Officials abuse their authority in awarding penalties to citizens.	q 53	88	4	4	2	1	0
		% 34.9	57.9	2.6	2.6	1.3	0.7	
13	Officials exceed the limit of their legal authority in awarding penalties to citizens	q 43	97	6	3	1	2	0
		% 28.3	63.8	3.9	2.0	0.7	1.3	
14	Officials use the wrong regulation in awarding penalties to citizens	q 37	85	14	11	1	4	0
		% 24.4	55.9	9.2	7.2	0.7	2.6	
15	Officials violate the legally prescribed procedure in awarding penalties to citizens.	q 37	95	9	6	2	3	0
		% 24.3	62.5	5.9	4.0	1.3	2.0	
16	Officials have insufficient essential evidence in awarding penalties to citizens.	q 35	85	15	11	1	4	1
		% 23.2	56.3	9.9	7.3	0.7	2.6	
17	Registration fees regulation made by government is unreasonable.	q 23	49	28	40	3	9	0
		% 15.1	32.3	18.4	26.3	2.0	5.9	
18	The Industry and Commerce Bureau collects registration fees in excess of the amount stipulated in the regulation	q 36	68	19	25	1	3	0
		% 23.7	44.7	12.5	16.4	0.7	2.0	

1 = Totally Agree; 2 = Agree; 3 = Neutral; 4 = Disagree; 5 = Totally Disagree;
 9 = Don't Know; 0 = Missing value; q = Frequency; % = Valid Percentage.

		1	2	3	4	5	9	0
19	Strengthen the protection of legal rights and interests of citizens.	q 64	79	4	2	1	2	0
		% 42.1	52.0	2.6	1.3	0.7	1.3	
20	Push the government to work according to the laws.	q 60	86	5	0	1	0	0
		% 39.4	56.6	3.3	0.0	0.7	0.0	
21	Strengthen the idea of rule of law in the society.	q 57	90	1	2	1	1	0
		% 37.4	59.2	0.7	1.3	0.7	0.7	
22	Reduce the cases of abusing authority by government and its officials.	q 54	91	6	0	1	0	0
		% 35.5	59.9	3.9	0.0	0.7	0.0	
23	Increase the government's efficiency at work.	q 40	75	25	9	2	1	0
		% 26.3	49.3	16.5	5.9	1.3	0.7	
24	Strengthen the government's status.	q 43	68	23	14	2	2	0
		% 28.3	44.8	15.1	9.2	1.3	1.3	

		1	2	3	4	5	9	0
25	Petitioning to higher level of the government can better solve the problem than suing the government in court.	q 4	19	40	75	5	9	0
		% 2.6	12.5	26.3	49.4	3.3	5.9	
26	Using personal connection can better solve the problem than suing the government in court.	q 12	27	31	65	8	7	2
		% 8.0	18.0	20.7	43.3	5.3	4.7	
27	Using money can better solve the problem than suing the government in court.	q 10	19	34	76	10	3	0
		% 6.6	12.5	22.3	50.0	6.6	2.0	
28	Courts cannot fairly hear cases of administrative litigation initiated by citizens.	q 7	7	41	84	6	7	0
		% 4.6	4.6	27.0	55.3	3.9	4.6	
29	Courts will defend the administration.	q 8	14	34	84	9	3	0
		% 5.2	9.2	22.4	55.3	5.9	2.0	
30	Courts' verdicts cannot bind the administration.	q 3	13	23	95	16	1	1
		% 2.0	8.6	15.2	62.9	10.6	0.7	
31	Citizens do not dare to sue the government for fear of revenge by the officials.	q 16	50	28	50	6	2	0
		% 10.5	32.9	18.4	32.9	4.0	1.3	
32	It is very difficult to put administrative litigation into practice.	q 10	36	32	68	6	0	0
		% 6.6	23.7	21.1	44.7	3.9	0.0	

		1	2	3	4	5	9	0
33	Administrative litigation can help advance the reform and opening, hence should be further developed.	q 44	94	11	1	1	1	0
		% 28.9	61.8	7.2	0.7	0.7	0.7	
34	Administrative litigation can help protect citizens' legal rights and interests, hence should be further developed.	q 46	98	5	0	1	2	0
		% 30.2	64.5	3.3	0.0	0.7	1.3	
35	Administrative litigation can help strengthen the rule of law, hence should be further developed.	q 48	98	5	0	1	0	0
		% 31.6	64.4	3.3	0.0	0.7	0.0	
36	Development of administrative litigation requires judicial independence.	q 30	87	20	5	2	8	0
		% 19.7	57.2	13.2	3.3	1.3	5.3	
37	There is bright future for administrative litigation but the road is winding.	q 34	100	13	1	0	4	0
		% 22.4	65.8	8.5	0.7	0.0	2.6	

1 = Totally Agree; 2 = Agree; 3 = Neutral; 4 = Disagree; 5 = Totally Disagree;
9 = Don't Know; 0 = Missing value; q = Frequency; % = Valid Percentage.

38. Your gender:

	Frequency	(%)
Male	90	(59.6)
Female	61	(40.4)
Missing value	1	

39. Your age:

18-30	56	(36.8)
31-40	73	(48.0)
41-50	20	(13.2)
51-60	3	(2.0)
61 and above	0	(0.0)
Missing value	0	

40. Your political status:

Communist Party member	88	(58.3)
Communist Youth League member	26	(17.2)
Democratic Party member	1	(0.7)
Non-member	36	(23.8)
Missing value	1	

41. How long have you been in your present occupation?

Less than 1 year	9	(5.9)
1-3 years	32	(21.1)
4-6 years	23	(15.1)
7-10 years	24	(15.8)
Over 10 years	64	(42.1)
Missing value	0	

42. Which department are you working in?

Public Security	16	(11.2)
Environmental Protection	24	(16.8)
Industry and Commerce	38	(26.5)
Civil Affairs	32	(22.4)
Hygiene	16	(11.2)
Fire Services	13	(9.1)
Others	4	(2.8)
Missing value	9	
Missing value	68	

43. Your working district:

Hai Dian	77	(50.7)
Xi Cheng	36	(23.7)
Xuan Wu	39	(25.6)
Others	0	(0.0)
Missing value	0	

44. Your average real monthly income during the past year (RMB):

300 and below	1	(0.7)
301-600	29	(19.3)
601-1000	101	(67.3)
1001-1500	15	(10.0)
1501-2500	2	(1.3)
2501-4000	1	(0.7)
Above 4000	1	(0.7)
Missing value	2	

45. Your education level:

No formal education	0	(0.0)
Primary	0	(0.0)
Lower Secondary	1	(0.7)
Upper Secondary	25	(16.4)
Post-secondary	74	(48.7)
Undergraduate and above	52	(34.2)
Missing value	0	

Appendix 7 Relationship between Personal Particulars of the Individual Household Proprietors

Proprietors	Tend to be
Male (64.9%)	Old (over 60), CCP member, senior (4 to over 10 years), in repairing, in Xuan Wu, earning RMB1001-1500, extreme in education background
Female (35.1%)	Young (18-30), CYL member, junior (less than 1 to 3 years), in servicing, in Xi Cheng, low income of below RMB300 to 600, median education attainment
18-30 (52.0%)	Female, CYL member, new entrant (less than 1 to 3 years), non-resident, in Hai Dian, high income from RMB2501 to RMB4000
31-40 (28.0%)	Politically independent, in repairing, resident, median income RMB601-1000 and 1501-2500, highest education of upper secondary and above
41-50 (11.6%)	CCP member, senior (over 10 years), resident, in Xuan Wu, lower secondary
51-60 (5.1%)	CCP member, senior (7 to over 10 years), in repairing, resident, in Xuan Wu, primary only
Over 60 (3.3%)	Male, CCP member, senior (7 to over 10 years), in repairing and catering, resident, in Xuan Wu, earning RMB1001 to over 4000, primary only
CCP member (7.6%)	Male, old (41 to over 60), very senior (over 10 years), in repairing, resident, in Xuan Wu, high income of RMB1501 to over 4000, post-secondary and above
CYL member (23.6%)	Female, aged 18-30, new entrant (less than 1 to 3 years), non-resident, in Hai Dian and Xi Cheng, low income of RMB301-600, upper to post-secondary
DP member (0.3%)	Male, young (18-40), non-resident, in Xuan Wu, earning RMB301-1000, lower to upper secondary
Non-member (68.5%)	Early middle age (31-40), in repairing, in Xuan Wu, earning RMB601-1500, primary only
Below 1 year (14.1%)	Female, young (18-30), CYL member, in servicing, in Hai Dian, low income of below RMB300 to 600, degree-holder
1-3 years (36.3%)	Female, young (18-30), CYL member, in catering, non-resident, in Hai Dian, low income of RMB301-600
4-6 years (22.0%)	Male, in repairing, in Xuan Wu, earning RMB601 to over 4000, lower secondary
7-10 years (11.0%)	Male, old (51 to over 60), in repairing, in Xuan Wu, earning RMB1001-1500, some over RMB4000, primary only
Over 10 years (16.6%)	Male, old (41 to over 60), CCP member, in repairing, resident, in Xuan Wu, high income of over RMB4000, primary as well as post-secondary
Retailing (54.9%)	Non-resident, in Xuan Wu, high income of over RMB4000
Catering (20.9%)	Old (over 60), new entrant (1 to 3 years), resident, in Hai Dian, earning RMB1501-2500

Proprietors	Tend to be
Servicing (17.8%)	Female, new entrant (less than 1 year), non-resident, in Hai Dian and Xi Cheng, high income of RMB2501-4000, degree-holder
Repairing (5.4%)	Male, old (31-40 and over 50), CCP member as well as non-member, 4 to over 10 years in the job, resident, in Xuan Wu, earning RMB1001-1500, primary only
Resident (46.7%)	Old (31 to over 60), CCP member, senior (over 10 years), in catering and repairing, earning RMB601-1000, upper secondary and above
Non-resident (53.3%)	Young (18-30), CYL member, junior (1 to 3 years), in retailing and servicing, low income of less than RMB300 to 600, lower secondary
Hai Dian (28.2%)	Young (18-30), CYL member, new entrant (less than 1 to 3 years), in catering and servicing, full range of income, post-secondary and above
Xi Cheng (37.3%)	Female, CYL member, in servicing, high income of RMB 2501-4000
Xuan Wu (34.5%)	Male, old (41 to over 60), CCP member as well as non-member, 4 to over 10 years in the job, in retailing and repairing, low income of below RMB300, primary to lower secondary
300 & less (14.5%)	Female, new entrant (less than 1 year), non-resident, in Hai Dian and Xuan Wu, primary to lower secondary
301-600 (34.0%)	Female, CYL member, new entrant (less than 1 to 3 years), non-resident, upper secondary
601-1000 (32.0%)	Aged 31-40, politically independent, 4 to 6 years in the job, resident, upper secondary and above
1001-1500 (9.4%)	Male, old (over 60), politically independent, 4 to 10 years in the job, in repairing, degree-holder
1501-2500 (5.4%)	Aged 31-40 and over 60, CCP member, 4 to 6 years in the job, in catering, post-secondary and above
2501-4000 (2.0%)	Aged 18-30 as well as over 60, CCP member, 4 to 6 years in the job, in servicing, in Xi Cheng, post-secondary
Over 4000 (2.7%)	Old (over 60), CCP member, 4 to over 10 years in the job, in retailing, in Hai Dian, post-secondary and above
No formal education (0.1%)	Female, old (over 60), politically independent, junior (1-3 years), in retailing, resident, in Hai Dian, low income of below RMB300
Primay (9.0%)	Old (51 over 60), politically independent, senior (7 to over 10 year), in repairing, in Xuan Wu, low income of below RMB300
L/Secondary (43.3%)	Old (41-50), 4 to 6 years in the job, non-resident, in Xuan Wu, low income of below RMB300
U/Secondary (34.7%)	Aged 31-40, CYL member, resident, earning RMB301-1000
P/Secondary (9.7%)	Aged 31-40, CCP and CYL member, senior (over 10 years), resident, in Hai Dian, earning RMB601-1000 as well as 1501 to over 4000
Degree-holder (3.2%)	Aged 31-40, CCP member, new entrant (less than 1 years), in servicing, resident, in Hai Dian, earning RMB601-2500 as well as over 4000

Appendix 8 Relationship between Personal Particulars of the Government Officials

Official	Tend to be
Male (59.6%)	Old (41-60), CCP member, senior (4-6 years), under Hygiene, in Xi Cheng and Xuan Wu, earning over RMB1000, post-secondary
Female (40.4%)	Young (18-30), CYL member, new recruit (less than 1 years), under Industry & Commerce and Civil Affairs, in Hai Dian, upper secondary
18-30 (36.8%)	Female, CYL member, junior (less than 1 to 6 years), under Public Security and Environmental Protection, in Hai Dian, earning RMB601-1000, degree-holder
31-40 (48.0%)	Politically independent, senior (over 10 years), under Fire Services, in Xi Cheng, earning RMB1001-1500, post-secondary
41-50 (13.2%)	Male, CCP member, senior (over 10 years), under Hygiene, in Xuan Wu, earning RMB1001-1500, upper secondary
51-60 (2.0%)	Male, CCP member, senior (over 10 years), under Hygiene, in Hai Dian, earning RMB601-1000, post-secondary
CCP member (58.3%)	Male, old (41-60), senior (over 10 years), under Fire Services and Environmental Protection, in Xi Cheng and Xuan Wu, post-secondary
CYL member (17.2%)	Female, young (18-30), less than 1 or 4-6 years in the job, under Public Security and Industry & Commerce, earning RMB301-600, degree-holder
DP member (0.7%)	Female, aged 31-40, senior (over 10 years), under Hygiene, in Hai Dian, earning RMB601-1000, degree-holder
Non-member (23.8%)	Aged 31-40, senior (7-10 years), under Civil Affairs and Hygiene
Below 1 year (5.9%)	Female, young (18-30), CYL member, under Public Security, in Hai Dian, earning RMB301-600, degree-holder
1-3 years (21.1%)	Young (18-30), CYL member, under Environmental Protection, in Hai Dian, degree-holder
4-6 years (15.1%)	Male, young (18-30), CYL member, under Industry & Commerce, in Hai Dian, earning RMB601-1000, degree-holder
7-10 years (15.8%)	Politically independent, under Civil Affairs, earning RMB601-1000, degree-holder
Over 10 years (42.1%)	Old (31-50), CCP member or independent, under Hygiene and Fire Services, in Xi Cheng and Xuan Wu, upper to post-secondary
P/Security (11.2%)	Young (18-30), CYL member, new recruit (less than 1 year), in Hai Dian, degree-holder
E/Protection (16.8%)	Young (18-30), some CCP member, junior (less than 1 to 3 years), in Hai Dian
I/Commerce (26.5%)	Female, CYL member, 4-6 years in the job, in Xi Cheng, earning RMB601-1000, upper secondary

Official	Tend to be
Civil Affairs (22.4%)	Female, political independent, senior (7-10 years), earning RMB1001-1500, degree-holder
Hygiene (11.2%)	Male, old (41-50), politically independent, senior (over 10 years), in Xuan Wu, post-secondary
Fire Services (9.1%)	Aged 31-40, CCP member, senior (over 10 years), earning RMB301-600, upper to post-secondary
Hai Dian (50.7%)	Female, young (18-30), CYL member, less than 1 to 6 years in the job, under Public Security and Environmental Protection, earning RMB601-1000
Xi Cheng (23.7%)	Male, aged 31-40, CCP member, senior (over 10 years), under Industry and Commerce
Xuan Wu (25.6%)	Male, old (41-50), CCP member, senior (over 10 years), under Hygiene, earning RMB301-600 and 1001-1500, post-secondary
300 & less (0.7%)	Male, old (41-50), CCP member, senior (7-10 years), under Industry and Commerce, in Xuan Wu, post-secondary
301-600 (19.3%)	CYL member, new recruit (less than 1 year), under Fire Services, in Xuan Wu, upper secondary
601-1000 (67.3%)	Young (18-30), 4-10 years in the job, under Industry & Commerce, in Hai Dian, degree-holder
1001-1500 (10.0%)	Old (31-50), under Civil Affairs, in Xuan Wu
1501-2500 (1.3%)	Male, aged 31-40, CCP member, senior (over 10 years), under Industry and Commerce, in Xuan Wu, post-secondary
2501-4000 (0.7%)	Male, young (18-30), CCP member, junior (1-3 years), under Environmental Protection, in Xi Cheng, post-secondary
Over 4000 (0.7%)	Female, aged 31-40, CCP member, senior (7-10 years), under Environmental Protection, in Xi Cheng, post-secondary
L/secondary (0.7%)	Female, aged 31-40, CYL member, 4-6 years in the job, under Environmental Protection, in Hai Dian, earning RMB601-1000
U/secondary (16.4%)	Female, old (41-50), politically independent, senior (over 10 years), under Industry & Commerce and Fire Services, in Xi Cheng, earning RMB301-600
P/secondary (48.7%)	Male, aged 31-40, CCP member, senior (over 10 years), under Hygiene and Fire Services, in Xuan Wu
Degree-holder (34.2%)	Young (18-30), CYL member, less than 1 to 10 years in the job, under Public Security and Civil Affairs, in Hai Dian, earning RMB601-1000

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